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Rum Row: The Sinking of the Rum Runner
I’M ALONE

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I. INTRODUCTION

Halfway between Louisiana and the Yucatan Peninsula in nearly 2,000 fathoms of water, the Union Jack had gone down riddled with bullet holes from American guns, and an international incident was in the making.

—Nancy Skoglund, *The I'M ALONE Case: A Tale from the Days of Prohibition*¹

On March 22, 1929, after a two-day chase beginning just off the Louisiana shore, the United States Coast Guard cutters WOLCOTT and DEXTER sank the notorious Canadian-flagged rum runner I'M ALONE in the middle of the Gulf of Mexico. The I'M ALONE had long been the bane of beleaguered Coast Guard vessels trying to enforce Prohibition laws along a vast maritime frontier, and in fact, the commanders of both cutters had been outrun or outwitted by her flamboyant captain, Jack Randell, in the months leading up to this incident. They were not about to let her escape this time. Randell and his eight-man crew were able to survive the flurry of cannon, rifle, and pistol fire that caused her sinking, but they were not so lucky once they found themselves bobbing in the heaving late-winter Gulf waters; one of her crew, Leon Mainguy, drowned. The rest were shackled aboard the two cutters until they were delivered two days later to federal authorities in New Orleans, where they were promptly charged with attempting to bring spirituous liquors to the United States in violation of its Prohibition laws.

Coming as it did nearly ten years into the Prohibition era, with the American public increasingly wearied by and skeptical of the Prohibition laws and the enforcement excesses that accompanied them, this case came to personify the domestic political divide between the “wets” and the “drys.” But it was in the international arena that this matter had its greatest effect. Britain and Canada in particular had long been aggrieved by U.S. actions in furtherance of its Prohibition laws. Vessels flagged by the two countries had been subjected to indignities, including lethal fire, by U.S. enforcement authorities. Good-neighborly initiatives by those nations to support U.S. antismuggling efforts were seemingly

1. Nancy Galey Skoglund, *The I'm Alone Case: A Tale from the Days of Prohibition*, 23 U. ROCHESTER LIBR. BULL. 43 (1968), <http://www.library.rochester.edu/rbscp/1004>. The Rare Books Special Collections & Preservation Department at the University of Rochester houses the collected papers of William Roy Vallance, who, from 1918 to 1957, was assigned to the British Empire desk in the office of the Solicitor of the Department of State. In this capacity, he served as counsel to the American arbiter mediating the I'M ALONE case, as described in this article. Material from this collection was accessed by the author and used throughout the article. The collection is stored in folders within boxes. William Roy Vallance Papers, 1908-1967, Rare Books Special Collections & Preservation Department, University of Rochester [hereinafter Vallance Collection].

underappreciated, leading to widespread feelings of resentment amongst their citizenry and governments. This incident was the straw that broke the camel's back, so to speak. Canada, the flag state of the I'M ALONE, was not mollified by the pithy statements of regret or justification that emanated from U.S. officials in response to inquiries about the circumstances surrounding the sinking. Instead, Canada exercised its right to bring the matter before an arbitral commission that, after an arduous six-year process that involved consideration of some of the leading law of the sea issues of the day, finally rendered a decision that neither fully vindicated nor satisfied either nation.

As the first of only three cases to ever go before an international tribunal on the issue of the degree of force constabulary authorities can use in furtherance of a maritime law enforcement operation, the case of the I'M ALONE has continued modern-day relevance. It is also a fascinating maritime tale, replete with swashbuckling characters, secret codes, pursuits on the high seas and internal waters of the United States, conspiracy, and violence, all in the context of the fascinating era of Prohibition. For these reasons, it is a story worth telling. This Article, which comprehensively examines the facts of the case, the diplomatic fallout, and the legal issues and processes that resulted, does just that, in what is intended to be the definitive recounting of this dramatic maritime saga.

II. PROHIBITION, MARITIME SMUGGLING, AND THE LAW

Prohibition, called the “noble experiment” by President Herbert Hoover, originated in Congress as the Volstead Act, so named in recognition of its sponsor, Minnesota congressman and chairman of the House Judiciary Committee Andrew Volstead.² It became the law of the land as the Eighteenth Amendment to the United States Constitution on January 16, 1920, one year after its ratification by the thirty-sixth state.³ Its main effect was to prohibit the manufacture, sale, transportation, or importation of drinking alcohol into the United States or its territorial waters.⁴ The United States Bureau of Prohibition, also known as the “Prohibition Unit,” was established as the principal federal enforcement

2. Joseph Anthony Ricci, “All Necessary Force”: The Coast Guard and the Sinking of the Rum Runner “I’m Alone” 3 (May 20, 2011) (unpublished M.A. thesis, University of New Orleans), <http://scholarworks.uno.edu/cgi/viewcontent.cgi?article=2326&context=td>.

3. JANICE PATTON, *THE SINKING OF THE I'M ALONE* 18 (1973). This total reflected the requisite 3/4 of states required for ratification of a constitutional amendment, there being only 48 states at the time. Thirty-three states were dry before Prohibition became official. DONALD L. CANNEY, *RUM WAR: THE U.S. COAST GUARD AND PROHIBITION* 2 (1989).

4. Ricci, *supra* note 2, at 3.

agency, and was ultimately housed in the United States Treasury Department.⁵ There, too, resided the U.S. Coast Guard, which served as the bureau's maritime antimuggling arm.⁶

Prohibition enforcement at sea was difficult in the best of circumstances. The Coast Guard was stretched thin, with inadequate vessels and personnel to police a vast maritime border.⁷ The service's enforcement efforts were dissipated by the need to simultaneously carry out multiple missions, such as search and rescue.⁸ Unscrupulous bootleggers would capitalize on this by issuing false distress calls, causing a cutter to divert to the reported position, only to find there was no distress at that location.⁹ At other times, bootleggers would employ a decoy vessel ("mosquito boat"), which would depart from a rum runner and race for shore, as if carrying a cargo of liquor.¹⁰ Coast Guard cutters would pursue, certain of an ironclad seizure, only to find the mosquito boat to be empty of contraband.¹¹ In either instance, the cutters would be away from the real scene of action, where smugglers would off-load the rum runner, laughing up their sleeves at the Coast Guard's gullibility.¹² Even in the relatively rare instances where the Coast Guard was able to seize a rum runner, unsympathetic courts, reflecting the unpopularity of the Prohibition laws, often failed to mete out sufficient penalties to deter further law breaking.¹³ Small wonder, then, that the British Ambassador to the United States, acting on Canada's behalf in response to a 1926 incident in which the Canadian-flagged W.H. EASTWOOD was struck by a number of shells fired from the U.S. Coast Guard cutter SENECA, had these words of sympathy for the beleaguered Coast Guardsmen fighting the war on Prohibition:

5. *Id.*

6. *Id.*

7. The resource equation improved as Prohibition went on. In 1925, after four years of marginal success with liquor interdiction efforts, the Coast Guard received a significant increase in funding and personnel. Expansion included twenty-five activated, mothballed, World War I flush-deck destroyers, which were not well suited to the constabulary mission (one destroyer was described by her commanding officer as an "appalling mass of junk"), but also new purpose-built 75-, 100-, and 125-foot patrol boats, each able to carry enough fuel for extended patrols. The increase from seventy-five cutters of all classes and types in 1923 to 389 by June of 1925 required a concomitant increase in manpower from 5982 members in 1924 to 10,009 in 1926. *Id.* at 4, 8-9, 13.

8. *Id.* at 3.

9. *Id.* at 33.

10. *Id.* at 10.

11. *Id.*

12. *Id.*

13. CANNEY, *supra* note 3, at 5. For example, the steamer UNDERWRITER was seized four times in one year, three times by the same cutter. Each time, she was auctioned off and immediately resumed running liquor. *Id.* at 6.

We on our side should take into consideration the provocation to which these coast guard officers and crews are subjected. The coast guard cutters which are used for the purpose of picketing rum-runners anchored off the American Coast are generally very small ships commanded by a non-commissioned officer. They stay out as long as their supplies last tossing about in cold and stormy seas in winter with no comforts to speak of and dry only in the sense that they have no warming liquor aboard. The rum-running schooners on the other hand are generally larger and more comfortable. The crews are better paid than the coastguardsmen, they are well supplied with good food and warming drinks. They take a pleasure in taunting the picketing coast guard crew through megaphones or by signals with their inferiority in the matter of comforts both solid and liquid and often invite them on board to come and have a glass of grog!¹⁴

I confess that in these circumstances it is not surprising to me that after a fortnight of this sort of thing coastguardsmen, in their efforts to dislodge the rum-runner from his anchorage, might fire at the crew and hit the pigeon. My only wonder is that incidents of this sort happen so rarely. I am inclined to think that even British sailors under similar provocation might from time to time kick over the traces.¹⁵

Prohibition enforcement also strained the patience and good will of the international community. The United States' prohibition laws, "differing materially from the policies in regard to control of the liquor traffic which were in force in the majority of countries, inevitably foreshadowed international difficulties through the likelihood of smuggling operations on a large scale."¹⁶ Due as much to proximity as anything else, Great Britain and her dominion of Canada were among the nations that caused, and experienced, the most Prohibition-related enforcement issues. A practice that particularly irritated the United States was the formation of British or Canadian shipping companies by American bootleggers, whose smuggling vessels would then fly the flag of that State of incorporation.¹⁷ This had enforcement consequences to the United

14. W.J. Fenrick, *Legal Limits on the Use of Force by Canadian Warships Engaged in Law Enforcement*, 18 CAN. Y.B. INT'L L. 113, 137 (1980).

15. *Id.*

16. Letter from Vincent Massey, Canadian Minister, to Henry L. Stimson, Sec'y of State (Apr. 9, 1929), *reprinted in* 2 DEP'T OF STATE, PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 1929, at 25 (1943).

17. "[T]he registration in Canada of rum-running vessels in the names of individuals or dummy shipping companies means absolutely nothing, as a rule, with regard to their actual ownership or certainly with regard to their actual operators, almost all of whom have their headquarters in the United States" Letter from W. Henry Robertson, Am. Consul Gen., Halifax, to Frank B. Kellogg, Sec'y of State (Feb. 15, 1927) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 2).

States, as discussed *infra*. The United States repeatedly brought such matters to the attention of British authorities, as illustrated by this correspondence from the United States Secretary of State to the British Ambassador to the United States related to the seizure of the British schooner M.M. GARDNER:

[I]nformation has been received to the effect that this vessel is owned by the British Transportation and Trading Company of Nassau. William Frederick McCoy,¹⁸ who is president of the corporation, is an American citizen, and I am informed that he is under indictment in several jurisdictions of the United States in connection with liquor smuggling operations. Maud McCoy, who is secretary and treasurer, is his wife. The Company is understood to have no actual shareholders other than Mr. McCoy except directors holding a qualifying interest. From these statements it seems that the British Transportation and Trading Company is merely a ship-holding company, organized by Mr. William Frederick McCoy, . . . for the purpose of obtaining British registry for vessels in order that he may obtain the protection of the British flag for his ships which are engaged in smuggling liquor into the United States.

As you stated in your note No. 781 of October 13, 1922, that your Government was "desirous of assisting the United States Government to the best of their ability in the suppression of the traffic and in the prevention of the abuse of the British flag by those engaged in it," I am submitting these facts to you in the hope that you will be so good as to cause the operations of the British Transportation and Trading Company to be investigated and inform me whether, in case it is found that the actual interest involved is American, your Government would be disposed to take any steps to prevent the use of the British flag on ships belonging to this concern for the purpose of avoiding seizure of its vessels by the agents of the United States for violation of its laws.¹⁹

The "protection" an American bootlegger like McCoy would get by flagging his vessel as British (or any other foreign nation, for that matter) derived from the international law of the sea, which mostly existed as international practice or custom, not as treaty or otherwise codified law.²⁰

18. It was in his honor that the phrase "The Real McCoy" was coined. CANNEY, *supra* note 3, at 13.

19. Note from Charles E. Hughes, Sec'y of State, to Sir Auckland Geddes, British Ambassador to the U.S. (Feb. 26, 1933), *reprinted in* 4 DEP'T OF STATE, ARBITRATION SERIES NO. 2 app. F, at 120 (1933).

20. The first multilateral codification of the law of the sea occurred as a product of the First United Nations Conference on the Law of the Sea in Geneva, Switzerland, in 1958. This codification took the form of the Convention on the Territorial Sea and Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas, and the Convention on Fishing and Conservation of the Living Resources of the High Seas. *See* Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205;

The ability of a coastal state like the United States to prescribe and enforce domestic (municipal) laws like its prohibition laws against foreign vessels was limited to its territorial waters.²¹ Though there was “no absolute agreement” as to the maximum breadth of territorial waters, predominant state practice was that territorial waters ended, and the high seas began, three nautical miles from a nation’s coast.²² Beyond its territorial waters, i.e., on the high seas, a coastal state’s jurisdiction to enforce its municipal laws against foreign-flagged vessels was extraordinarily limited; law enforcement on the high seas was, and is, considered to be, with very limited exceptions, the exclusive province of the flag state.²³ Both Britain and the United States adamantly opposed efforts by the international community to expand the breadth of territorial waters, for any such expansion would concomitantly expand the reach of the coastal state into the global maritime commons, to the detriment of the “long established rule of free passage on the high seas in times of peace.”²⁴

The consequence of the U.S. enforcement jurisdiction ending at three nautical miles is that foreign vessels could, with impunity, blatantly subvert U.S. prohibition laws by overtly carrying liquor intended to be smuggled into the United States, as long as they remained outside of U.S. territorial waters. Infamous “rum rows” sprang up along the U.S. coast, as savvy entrepreneurs sought to emulate the success of their pioneer, the aforementioned Captain William S. McCoy, off Long Island in May 1921 aboard his British-flagged auxiliary schooner TOMOKA.²⁵ At these floating bazaars, a virtual fleet of foreign-flagged rum runners—principally British and Canadian,²⁶ many of which were reflagged former U.S. vessels—would sell their distilled cargoes over the railing on a first-

Convention on the Continental Shelf, Apr. 26, 1958, 15 U.S.T. 471, 499 U.N.T.S. 311; Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 82; Convention on Fishing and Conservation of the Living Resources of the High Seas, Apr. 29, 1958, 17 U.S.T. 138, 559 U.N.T.S. 285.

21. This limitation did not apply to vessels flagged domestically; as to them, with very limited exceptions, the United States had plenary enforcement authority and jurisdiction regardless of where those vessels were located.

22. Clyde Eagleton, *The I'm Alone*, 7 N.Y.U. L.Q. REV. 159, 160 (1929-1930); Keener C. Frazer, *The “I'm Alone” Case and the Doctrine of “Hot Pursuit”*, 7 N.C. L. REV. 413, 413-18 (1928-1929).

23. United Nations Convention on the Law of the Sea art. 92, Dec. 10, 1982, 1833 U.N.T.S. 561 [hereinafter UNCLOS].

24. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 26.

25. CANNERY, *supra* note 3, at 13.

26. About 85% of the rum cargo arrived, according to unofficial estimates, on vessels operated under the British or Canadian flag. Oliver McKee, Jr., *Rum Row Gone but the “War” at Sea Goes On*, N.Y. TIMES, Mar. 31, 1929, at xx 3.

come, first-served basis to whomever had enough money to buy it, all beyond the three-mile limit, in full view of frustrated and impotent Coast Guard enforcement vessels.²⁷

Such an obvious Achilles heel to the success of the “noble experiment” could not be left unaddressed, and as a result, the United States adopted the Tariff Act of 1922.²⁸ This law purported to extend U.S. authority for certain revenue purposes out to twelve nautical miles, and authorized officers of the Coast Guard or United States Customs and Border Enforcement to “hail and stop” suspected vessels within that distance of the coast “and use all necessary means” to compel compliance and “in case of escape or attempted escape, to pursue and arrest any persons” engaged in violating the law.²⁹ U.S. courts in general upheld the validity of the Tariff Act, though its provisions seemed to compromise the United States’ steadfast opposition to expanding coastal state enforcement rights beyond three nautical miles.³⁰ The British did not accede to this unilateral extension of enforcement jurisdiction by the United States into the high seas, informing U.S. officials that “any attempt on the part of the United States authorities to seize a British ship outside the three-mile limit would be regarded by His Majesty’s Government as creating a very serious situation.”³¹ Undoubtedly, in doing so the British recalled the sharp protests lodged during World War I by U.S. Secretary of State, William Jennings Bryant, to British Foreign Secretary, Sir Edward Grey, regarding British “municipal enactments” that, in the United States’ view, were “clearly at variance with international law and practice” and that resulted in unlawful encroachment on American neutral shipping rights.³²

Despite their uncompromising views on keeping the three-mile limit of territorial waters sacrosanct, and despite some skepticism at the true extent of maritime smuggling,³³ the British and Canadians were not

27. JACK RANDELL, I’M ALONE 262 (1930).

28. Tariff Act of 1922, Pub. L. No. 67-318, § 581, 42 Stat. 858, 972 (1922).

29. *Id.*

30. Frazer, *supra* note 22, at 419.

31. Note from H.G. Chilton, British Chargé d’Affaires, to Charles E. Hughes, Sec’y of State (July 10, 1923), reprinted in 4 DEP’T OF STATE, *supra* note 19, app. F, at 116.

32. Letter from William Jennings Bryant, Sec’y of State, to Sir Edward Grey, British Foreign Sec’y (Dec. 26, 1914) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 7).

33. British authorities in 1923 cited a statement by the U.S. Prohibition Commissioner that reports of widespread maritime smuggling were part of a “great and elaborate propaganda campaign” to discredit law enforcement and divert attention from domestic sources of production. Note from H.G. Chilton, British Chargé d’Affaires, to Acting Sec’y of State (Sept. 17, 1923), reprinted in 4 DEP’T OF STATE, *supra* note 19, app. F, at 98-99. Later, in 1930, the Canadians cited

entirely unsympathetic to the United States' plight in making the "noble experiment" work. The British government, through the Registrar-General of Shipping and Seamen in London, agreed to provide ownership information regarding British vessels;³⁴ thus, for example, the United States was aware that the I'M ALONE had been sold on June 26, 1928, to the Eugene Creaser Shipping Co., Ltd. of Lunenburg³⁵ and that on September 28, 1928, she had again been transferred, this time to the Eastern Seaboard Steamship Co., Ltd., of Lunenburg.³⁶ Great Britain, in an *aide memoire* dated March 27, 1926, also agreed on behalf of herself and commonwealth nations to investigate and take action against her vessels when it was demonstrated that they had committed some sort of fraud—usually declaring a false destination—on their forms to clear British customs.³⁷

Canada had, since February 1927, enjoyed full and unrestricted diplomatic status in the United States, with an accredited minister, in a reflection of "the new status of the dominion as an independent power."³⁸ This case was an early test of her ability to deal with a powerful, up-and-coming neighbor with whom Canada had had a checkered relationship. Canada was not unsympathetic to the ideals underlying the United States' "noble experiment"; she herself had so experimented, as all of the Canadian provinces between 1916 and 1919 had passed laws forbidding the sale of alcohol.³⁹ Though these laws had almost all been repealed by

a U.S. Treasury Department report that estimated the foreign contribution to the illicit liquor supply at only 3-4%. Despatch from H.H. Wrong, Canadian Chargé d'Affaires, to William L. Mackenzie King, Canadian Sec'y of State for External Affairs (Sept. 8, 1930), *reprinted in* 4 DEP'T EXTERNAL AFFAIRS, DOCUMENTS ON CANADIAN EXTERNAL RELATIONS 1926-1930, at 531 (Can.).

34. See Correspondence Related to Prohibition (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 107, Folder 5); Correspondence on the *I'm Alone* Case (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 121, Folder 2, Box 120, Folder 10).

35. Letter from L.C. Pinkerton, Am. Consul-in-Charge, London, to Frank B. Kellogg, Sec'y of State (Sept. 25, 1928) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 107, Folder 5).

36. Letter from Albert Halstead, Am. Consul Gen., to Frank B. Kellogg, Sec'y of State (Nov. 16, 1928) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 107, Folder 5).

37. See *infra* note 63 and accompanying text.

38. *Canada's Status*, BOS. HERALD, Mar. 28, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 6).

39. PATTON, *supra* note 3, at 23. Unlike the United States, each Canadian province acted separately and independently in adopting, and later repealing, Prohibition.

the late 1920s,⁴⁰ their existence demonstrates latent Canadian sympathy for and understanding of the significant enforcement challenges faced by the United States. These sentiments, coupled with a desire to retain the good graces of a powerful neighbor, impelled Canada to enter into various treaties with the United States for the suppression of smuggling.⁴¹ Of principal importance was Canada's agreement, in 1924, to provide customs clearance information to the United States regarding suspected smugglers and to prevent the clearances of vessels for ports where their cargo was already known to be contraband.⁴² As a result, U.S. officials were able to keep reasonably close tabs on the activities of known or suspected smuggling vessels flagged by, or operating from, Canada.⁴³ Canada had also agreed in 1927 to require Canadian liquor exporters to post bond in double duties on their exports and had undertaken, at her own expense, to improve police patrols on her side of the border.⁴⁴ Finally, she independently agreed to take action against her vessels for false customs declarations.⁴⁵ In short, Canada felt that she had been more

40. Repeal occurred in Quebec, British Columbia, and the Yukon in 1921; Manitoba in 1923; Alberta in 1924; Saskatchewan in 1925; Ontario and New Brunswick in 1927; Nova Scotia in 1930; and the outlier, Prince Edward Island, in 1948. *Id.*

41. Canada was not alone in this regard; as of February 1932, antismuggling treaties relating to the 18th Amendment had been entered into with Great Britain, Norway, Denmark, German, Sweden, Italy, Panama, Netherlands, Cuba, Spain, France, Belgium, Greece, Japan, Poland, Mexico, and Chile. Alcoholic Liquors Convention, U.S.-Pan., Mar. 14, 1932, 48 Stat. 1488; Smuggling Convention, U.S.-Pol., June 19, 1930, 46 Stat. 2773; Smuggling Convention, U.S.-Chile, May 27, 1930, 46 Stat. 2852; Smuggling Convention, U.S.-Japan, May 31, 1928, 46 Stat. 2446; Suppression of Smuggling, U.S.-Greece, Apr. 25, 1928, 45 Stat. 2736; Convention to Prevent Smuggling of Intoxicating Liquors, U.S.-Cuba, Mar. 4, 1926, 44 Stat. 2395; Suppression of Smuggling, U.S.-Spain, Feb. 10, 1926, 44 Stat. 2465; Prevention of Smuggling, U.S.-Mex., Dec. 23, 1925, 44 Stat. 2358; Convention with Belgium to Prevent Smuggling of Intoxicating Liquors into the United States, U.S.-Belg., Dec. 9, 1925, 45 Stat. 2456; Convention for the Prevention of Smuggling of Intoxicating Liquors, U.S.-Neth., Aug. 21, 1924, 44 Stat. 2013; Suppression of Smuggling, U.S.-Fr., June 30, 1924, 45 Stat. 2403; Suppression of Smuggling, U.S.-It., June 3, 1924, 43 Stat. 1844; Suppression of Smuggling, U.S.-Den., May 29, 1924, 43 Stat. 1809; Smuggling of Intoxicating Liquors, U.S.-Nor., May 24, 1924, 43 Stat. 1772; Suppression of Smuggling, U.S.-Swed., May 22, 1924, 43 Stat. 1830; Suppression of Smuggling, U.S.-Ger., May 19, 1924, 43 Stat. 1815; Convention on the Prevention of Smuggling of Intoxicating Liquors, U.S.-Gr. Brit., Jan. 23, 1924, T.S. No. 684 [hereinafter *Liquor Convention of 1924*].

42. Skoglund, *supra* note 1.

43. See discussion *infra* text accompanying notes 115-116.

44. Skoglund, *supra* note 1.

45. Letter from Joseph Grew, Acting Sec'y of State, to Sir Esme Howard, British Ambassador to the U.S. (Feb. 2, 1927) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 2). This letter references an aide memoire dated March 27, 1926, "to the effect that administrative action would be taken to prosecute masters for infractions of the Customs Act when reasonable grounds for suspicion were available for believing them guilty of making false declarations in regard to their final destinations." *Id.*

than cooperative in assisting the United States' Prohibition enforcement efforts.

All of these concessions, while helpful, did not cure the problem of rum rows just off the U.S. coast. The solution to that problem, at least for British vessels and those of her commonwealth, came in the form of the Liquor Convention of 1924 (Convention)⁴⁶ between Britain, which included all of her commonwealth, including dominions such as Canada, and the United States.⁴⁷ The Convention was a product of the thirst of passengers aboard British liners, the principal international travel mode of the day. Prohibition made no allowances for alcohol to be carried, much less served, aboard foreign vessels within the United States and its territorial waters, which presented a significant dilemma to the liners' operators,⁴⁸ either to not serve, or even possess, alcohol aboard any liner bound for the United States, which was a nonstarter, or carry and serve alcohol, and either jettison the unused alcohol overboard beyond three nautical miles from the U.S. coast, or retain the alcohol aboard and risk prosecution in U.S. domestic courts. As a result of this dilemma, British lawmakers proved, after initial reluctance, to be amenable to a U.S. proposal to modify the law as to maritime enforcement jurisdiction between the United States and Britain, ultimately forming the basis of the Convention.

Negotiations that led to the Convention began on June 26, 1922, with a note from U.S. Secretary of State, Charles Evan Hughes, to British Ambassador, A.C. Geddes, proposing an extension of U.S. territorial waters out to twelve nautical miles, and requesting the British to take steps to make it more difficult for U.S. vessels to reflag as British.⁴⁹ According to Hughes, "the situation with which the authorities of [the U.S.] Government are confronted has become so serious that this Government feels prompted to inquire whether your Government would be disposed to enter into a treaty for the purpose of checking the illegal practices in question."⁵⁰ Ambassador Geddes, while reassuring Hughes

46. The Convention was officially entitled the Convention Between the United States of America and Great Britain to Aid in the Prevention of the Smuggling of Intoxicating Liquors Into the United States. Liquor Convention of 1924, *supra* note 41.

47. According to the Canadian legation, the 1924 treaty "concerns any unit of the British Commonwealth." Albert W. Fox, *Ship Sinking Raises Affront Questions*, WASH. POST, Mar. 27, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 5).

48. The U.S. Supreme Court had ruled that the Prohibition laws applied aboard foreign vessels in U.S. waters. *The Case of the I'm Alone*, BROOKLYN DAILY EAGLE, Mar. 26, 1929, at 8.

49. Note from Charles E. Hughes, Sec'y of State, to A.C. Geddes, British Ambassador to the U.S. (June 26, 1922), *reprinted in* 4 DEP'T OF STATE, *supra* note 19, app. F, at 90.

50. *Id.*

that his proposal had “received the most sympathetic consideration,”⁵¹ demurred on behalf of the British government for two principal reasons. The first was that “[t]he outbreak of smuggling which has led to the proposal cannot be regarded as a permanent condition, but as one which will no doubt be suppressed by the United States authorities within the not distant future.”⁵² The second was British reluctance to create, or accept, precedent for extending the breadth of territorial waters. In their words, “[p]ractically, the treaty would weaken the three-mile limit principle because it would form a precedent for the conclusion of further similar treaties until finally the principle would become a dead letter.”⁵³

Ultimately, undoubtedly prompted by intense lobbying efforts by beleaguered liner operators, the British government, through their Chargé d’Affaires, H.G. Chilton, submitted a draft treaty on December 3, 1923 to the United States that formed the basis of the Liquor Convention of 1924.⁵⁴ The purpose of the Convention, as stated in the preamble, was to avoid “any difficulties which might arise between [the United States and Great Britain] in connection with the laws in force in the United States on the subject of alcoholic beverages.”⁵⁵ In article I, both parties declared their “firm intention” to uphold the three-mile nautical limit as the maximum permissible extent of territorial waters; the British in particular would brook no ambiguity on this score.⁵⁶ However, in article II, “His Britannic Majesty” agreed to permit the United States to take Prohibition-related law enforcement action aboard private British vessels beyond the outer limit of U.S. territorial waters, out to a distance from the coast of the United States the suspect vessel could traverse in one hour.⁵⁷ Permissible law enforcement actions out to this distance included boarding, addressing inquiries, and examining the ship’s papers for the purpose of determining whether a Prohibition-related offense had occurred or was contemplated; and if reasonable grounds for suspicion

51. Note from A.C. Geddes, British Ambassador to the U.S., to Charles E. Hughes, Sec’y of State (Oct. 13, 1922), *reprinted in* 4 DEP’T OF STATE, *supra* note 19, app. F, at 91.

52. *Id.* at 92.

53. Aide Memoire from H.G. Chilton, British Chargé d’Affaires, to Charles E. Hughes, Sec’y of State (July 14, 1923), *reprinted in* 4 DEP’T OF STATE, *supra* note 19, app. F, at 95.

54. Draft Treaty Presented by H.G. Chilton, British Chargé d’Affaires, to Charles E. Hughes, Sec’y of State (Dec. 3, 1923), *reprinted in* 4 DEP’T OF STATE, *supra* note 19, app. F, at 110.

55. Liquor Convention of 1924, *supra* note 41, pmb1.

56. *Id.* art. I.

57. Article II also provided that in cases in which the liquor was intended to be conveyed to the United States, its territories, or possessions by a vessel other than the one boarded and searched, it would be the speed of such other vessel and not the speed of the vessel boarded, which would determine the distance from the coast from which the rights under article II could be exercised. *Id.* art. II.

existed after such actions, the vessel could be searched, seized, and taken into a port of the United States for adjudication under its Prohibition laws.⁵⁸

The *quid pro quo* for this British concession was article III, which permitted British vessels to carry, while the vessel was voyaging to or from ports of the United States, or of its territories or possessions, or passing through the territorial waters thereof, liquor listed as sea stores or as cargo destined for a non-U.S. destination.⁵⁹ Such liquors were required to be kept under seal continuously while the vessel on which they were carried remained within U.S. territorial waters, and no part of such liquors could at any time be unloaded within the United States, its territories or possessions.⁶⁰ In short, articles II and III together indicate

a considerate purpose on the part of Great Britain to discourage her merchant ships from taking part in the illicit importation of liquor into the United States, and the further purpose of securing without objection or seizure the transportation on her vessels, through the waters and in ports of the United States, of sealed sea stores and sealed cargoes of liquor for delivery at other destinations than the United States.⁶¹

The other provision of significance in the Convention was article IV. This article provided that any claim by a British vessel for compensation on the grounds that it had suffered loss or injury through the improper or unreasonable exercise by the United States of the rights conferred by article II of the Convention, or that it had not been given the benefit of article III, would be referred for the joint consideration of two commissioners, one to be nominated by Britain, the other by the United States.⁶² Article IV went on to state that “effect” was to be given to any recommendations made by the commissioners in their joint report—assuming, of course, that a joint recommendation could be achieved.⁶³ British policy, which the Canadians adopted, was that they would invoke article IV only in those cases where there seemed to have been a clear violation of the Convention resulting in injury to an innocent vessel.⁶⁴

58. *Id.*

59. *Id.* art. III.

60. *Id.*

61. *Ford v. United States*, 47 S. Ct. 531, 536 (1927).

62. Liquor Convention of 1924, *supra* note 41, art. IV.

63. In the event consensus could not be achieved, the claim was to be referred to the Claims Commission established under the provisions of the Agreement for the Settlement of Outstanding Pecuniary Claims. Agreement for the Settlement of Outstanding Pecuniary Claims to Arbitration art. IV, U.S.-U.K., Aug. 18, 1910, 37 Stat. 1625.

64. Memorandum from O.D. Skelton, Under-Sec’y of State for External Affairs, to William L. Mackenzie King, Prime Minister (May 21, 1929), *reprinted in* 4 DEP’T EXTERNAL AFFAIRS, *supra* note 33, at 503-04.

And in fact, the I'M ALONE case was the only one, British or Canadian, to be dealt with via the article IV process.⁶⁵

The Convention's one-hour distance rule was an improvement, from the United States' perspective, in that it permitted Prohibition laws to be enforced beyond the three-mile territorial sea limit, at least against British vessels and those of her commonwealth. Now such vessels would have to conduct their smuggling business further out to sea, which put an end to rum rows and complicated all aspects of illicit liquor smuggling (the distance small "mosquito" boats had to travel to unload the rummies' cargoes, for example). But it was not a panacea. Now issues of fact, such as distance from the coast where enforcement efforts began and the suspect vessel's speed, were variables that had the potential to cause contention. Suppose, on the day of the chase, the suspect vessel had an engine or boiler casualty, cutting her actual achievable speed to something below the design or normally achievable speed. Suppose the sea state or wind direction were unfavorable to a rum runner equipped with sails. Basic issues relating to the jurisdiction of the United States to take law enforcement action at all would rest on such unresolved, and surely to be contested, issues.

The treaty had additional deficiencies that would loom large in the I'M ALONE arbitration. The first was whether U.S. enforcement vessels would have the right of "hot pursuit" if a vessel subject to the Convention was ordered to stop while it was outside territorial waters but within the one-hour distance (i.e., "in Convention waters"), but fled beyond that distance. The right of "hot pursuit"—that is, immediate and continuous pursuit that continues an act of jurisdiction that had begun, or which but for the accident of immediate escape would have begun, within the territory itself, that enables the territorial jurisdiction to be efficiently exercised⁶⁶—was recognized to exist as a "perfect right under international customary law" by both Canada and the United States.⁶⁷ However, customary practice was for pursuit to begin in territorial

65. See Correspondence Related to Prohibition, *supra* note 34, Box 107, Folder 6

66. William C. Dennis, *The Sinking of the I'm Alone*, 23 AM. J. INT'L L. 351, 357; Eagleton, *supra* note 22, at 62.

67. Frazer, *supra* note 22, at 420. In the *North* case, Canadian enforcement vessels discovered the U.S.-flagged fishing vessel NORTH violating Canadian fisheries laws within her territorial waters, and pursued and seized her on the high seas. *The North v. The King* (1906), 37 S.C.R. 385 (Can.). The Canadian Supreme Court upheld the lawfulness of the pursuit, stating that "reasonable necessity" appears to be the basis for its recognition under international law. *Id.* at 403. The court further endorsed "customs or revenue laws" as examples of the types of laws to which the doctrine of hot pursuit may be applied. *Id.*

waters.⁶⁸ Whether hot pursuit could be exercised from Convention waters was an open question.

Another unaddressed issue—one which would prove to be the pivotal issue in the I'M ALONE arbitration—was the amount of force, if any, that U.S. enforcement officials were permitted to use to effect the seizure of a suspect vessel. The international law in this arena was not well settled. Both the United States and Canada appear to have adhered, at least nominally, to a rule that “an officer must use the minimum amount of force necessary to execute his seizure,” with the level of force “necessary” being a question of fact, dependent upon the circumstances of the case.⁶⁹

In practice, however, perhaps in recognition of the dangerous, violent conditions faced by at-sea enforcement officials in their war on maritime smuggling,⁷⁰ both the United States and Canada implicitly sanctioned much more aggressive tactics than a “minimum force necessary” standard would suggest. On the U.S. side, according to the New York Herald Tribune:

Coast Guard officers have repeatedly in the past shown a disposition to use their guns too freely. The record of American yachts imperiled by their shells is a long one. Too often, Coast Guard vessels have been maneuvered as if a state of war existed along the Atlantic coast.⁷¹

68. “Article VIII of the Rules on the Definition and Regime of the Territorial Sea, adopted by the Institute of International Law in 1894, confined the right to ‘a pursuit commenced in the territorial sea.’” Letter from Vincent Massey, Canadian Minister, to Henry L. Stimson, Sec’y of State (Apr. 24, 1929), *reprinted in* 2 DEP’T OF STATE, *supra* note 16, at 43.

69. Eagleton, *supra* note 22, at 165; Letter from Vincent Massey to Henry L. Stimson, *supra* note 68, at 46. Section 581 of the Tariff Act of 1922 authorized the Coast Guard to “hail and stop” suspect vessels and to “use all necessary force to compel compliance.” Tariff Act of 1922, Pub. L. No. 67-318, § 581, 42 Stat. 858, 979 (1922). This phraseology remains intact in modern law. *See, e.g.*, 14 U.S.C. § 89(a) (2014).

70. In the most infamous incident, on August 7, 1927, off of the coast of Fort Lauderdale, two Coast Guardsmen from CG-249, Boatswain Sidney C. Sanderlin and Motor Machinist Mate Lamby, were shot to death aboard their cutter by the captain of motorboat V-13997, who they had arrested for smuggling liquor. The captain, Horace Alderman, was hanged at Fort Lauderdale CG Base Ten on August 17, 1929. CANNEY, *supra* note 3, at 12.

71. The War Against Smugglers, N.Y. HERALD TRIB., Mar 27, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 5). An example is the BLACK DUCK incident, in which patrol boat CG-290, under the command of Boatswain Alexander C. Cornell, ripped off twenty-one machine-gun rounds at the 30-knot rum runner which had loomed out of the darkness and passed close aboard, ignoring a signal to stop. CANNEY, *supra* note 3, at 12. At that moment, the BLACK DUCK changed course, and the shots ripped into her pilot house, killing three and leaving a fourth wounded. *Id.* The Coast Guardsmen were cleared of wrongdoing in the incident, and the BLACK DUCK was drafted into Coast Guard service. *Id.*

Not only American vessels were “imperiled.” In the northeast, the Coast Guard had machine-gunned the British schooners EASTWIND and HENRY MARSHALL, but both escaped capture.⁷² In the Gulf of Mexico, south of Mobile Bay, Coast Guard Cutter 251 fired on the British-flagged the MAPLEFIELD, a two-masted schooner registered in Nova Scotia, but operated by New Orleans rum runners, on March 1, 1926.⁷³ Even as late as 1931, two years after the I’M ALONE incident, Coast Guard Cutter CG-145 fired upon the Canadian-flagged rum runner JOSEPHINE K off the coast of New York, killing her master.⁷⁴

Excessive zeal of this nature was not limited to the U.S. side. The laws of Canada permitted enforcement vessels to sink a vessel subject to law enforcement action if it did not comply with an order to stop.⁷⁵ Perhaps the most enthusiastic exploiter of this law was a notorious enforcement officer of the Canadian Customs and Excise Enforcement Branch, “Machine Gun Kelly.”⁷⁶ He always carried a machine gun on deck ready for use and expended, on average, 1000 rounds a month.⁷⁷ According to Kelly: “My man Johnny—we called him ‘Able Seaman Splash’—was trained to run it along the water, and the spurts would be flying all up from there, and if they didn’t stop we’d get right into the hull. They could see we meant business.”⁷⁸ Kelly—or Able Seaman Splash—put “about a thousand or fifteen hundred” rounds into the hapless GERTRUDE JEAN; it “ate her plates right through,” and though it did not sink her, “she had to be completely refitted.”⁷⁹ And aboard the inappropriately named LUCKY PEGGY, rifle fire (the machine gun jammed after forty rounds) killed a crew member, though they managed to seize “140 kegs and 20 cases Polar Bear rum, and some very choice whiskey.”⁸⁰

Perhaps the most relevant (at least, from a U.S. perspective) incident of Canadian use of force was the lethal interdiction of the U.S.-flagged

72. Ricci, *supra* note 2, at 9.

73. *Id.*

74. *Id.* at 35.

75. Frazer, *supra* note 22, at 416. The Canadian Customs and Fisheries Protection Act, under the heading Boarding and Search, authorized the captain, master, or other person in charge of a government vessel or cruiser chasing a ship, vessel, or boat failing to bring to when required to “after first causing a gun to be fired as a signal, fire at or into such ship, vessel, or boat.” Customs and Fisheries Protection Act, R.S.C. 1927, c. 47 (Can.).

76. PATTON, *supra* note 3, at 31-36

77. *Id.*

78. *Id.*

79. *Id.* at 38.

80. *Id.*

fishing vessel SILOAM on May 24, 1923.⁸¹ On that date, the SILOAM was observed fishing illegally in Canadian territorial waters by the Canadian enforcement vessel MALASPINA, then engaged in a fur seal and fisheries patrol.⁸² The SILOAM ignored repeated orders to stop and fled out of Canadian territorial waters into the high seas.⁸³ The MALASPINA fired warning shots, which were ignored.⁸⁴ The SILOAM's master was even reported to have pointed a rifle at the MALASPINA, threatening to shoot, but one of his crew pulled it down.⁸⁵ The MALASPINA's captain then distributed rifles to several of his crew, and ordered rounds to be fired at the fishing vessel, first into the vessel generally, then into the wheelhouse with the object, ostensibly, of disabling the steering gear.⁸⁶ It was not known at the time of this volley where the SILOAM's crew was.⁸⁷ Afterwards, the Captain of the SILOAM stopped his ship and came on deck and shouted that a man had been shot—fatally, as it turned out.⁸⁸ The United States did not protest the incident at the time, but later cited it in the I'M ALONE arbitration as precedent for the proposition that the use of potentially deadly force in furtherance of a legitimate law enforcement operation was an accepted practice under international law, even if injury or death incidentally occurred as a result.⁸⁹

III. THE I'M ALONE AND HER CAPTAIN

The I'M ALONE was one of the most storied and notorious rum runners, grudgingly appraised by a New England customs officer as “the most successful rum-runner we ever tried to catch.”⁹⁰ Purpose-built for smuggling in 1923 by Smith & Rhuland in Lunenburg, Nova Scotia, she was supposedly named in honor of her original owner, a Boston bootlegger who abandoned his syndicate and struck out on his own.⁹¹

81. For all details regarding this incident, see Memorandum from the Deputy Minister of Marine and Fishers, Ottawa, on the Seizure of the U.S. Fishing Vessel SILOAM (May 30, 1923), *enclosed in* Note from H.G. Chilton, British Chargé d’Affaires, to Charles E. Hughes, Sec’y of State (June 12, 1923), *reprinted in* 4 DEP’T OF STATE, *supra* note 19, app. F, at 141-44.

82. *Id.* at 141-42.

83. *Id.* at 142.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 142-43.

88. The SILOAM eventually sank due, in the view of the Canadians, to deliberate scuttling by her crew, not fire from the MALASPINA. Her crew escaped aboard a dory and returned to the United States aboard the U.S. fishing schooner JENNIE. *Id.*

89. *See* discussion *infra* Section VI.D.

90. Skoglund, *supra* note 1.

91. *Id.*

Her official number was 150960, her port of registry Lunenburg, Nova Scotia, and she was officially listed at 181.70 gross tons, 90.45 register tons.⁹² Her length was 125.6 feet, beam 27 feet.⁹³ Her hull was wood.⁹⁴ The prototypes for her design were fishing schooners plying the Grand Banks that relied upon speed to compete with steam-driven vessels to get their catch to market.⁹⁵ Her propulsion system consisted of sails (a jib, jumbo, foresail, and storm trysail) and twin shafts, each powered by a Fairbanks-Morse diesel engine with four 10.5" cylinders capable of delivering 100 horsepower.⁹⁶ She had a radio with a range of about 1000 miles.⁹⁷

The U.S. government was well aware of her nefarious activities; as early as 1926, a dispatch from a U.S. diplomat in Canada referred to "the famous rum runner" the I'M ALONE.⁹⁸ In February 1928, the U.S. Secretary of State transmitted to select American consular offices a list of suspected smugglers, including the I'M ALONE, compiled by the Treasury Department, with instructions to those offices to "report to the department by telegraph any information which you may be able to obtain concerning the location, arrival, departure, or other activity of each vessel in the list"⁹⁹ Pursuant to these instructions, reasonably close tabs were kept on the I'M ALONE's activities. Numerous reports in U.S. government files detail her comings and goings.¹⁰⁰ In preparation for the arbitral proceedings between the United States and Canada after

92. Despatch from Charles W. Lane, Consular Agent, to T. Jaeckel, Am. Consul Gen., Halifax (May 17, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 7).

93. *Id.*

94. *Id.*

95. She was fashioned after the fishing vessel known locally about Boston as a Boston fishing rig, which differed from the usual two-masted schooner in that a Boston rigged vessel has neither bowsprit nor jib-boom. Letter from C.D. Feak, Assistant Intelligence Officer Treasury Dep't, to J.D. Hickerson, Dep't of State (Apr. 10, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 5).

96. Ricci, *supra* note 2, at 14.

97. See Correspondence on the *I'm Alone* Case, *supra* note 34, Box 121, Folder 2, Box 120, Folder 10).

98. Dispatch from Am. Consul Gen., Montreal (Apr. 26, 1926), *reprinted in* Letter from Joseph Grew, Acting Sec'y of State to William H. Robertson, Am. Consul Gen., Halifax (Feb. 10, 1927) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 2).

99. Memorandum from William Richards Castle, Jr., Sec'y of State on Illicit Liquor [sic] Traffic to Certain Am. Consular Offices (Feb. 25, 1928) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 107, Folder 5.). A later list of suspected smugglers also contained the I'M ALONE. Letter from L.C. Pinkerton to Frank B. Kellogg, *supra* note 35.

100. See *infra* text accompanying notes 105, 123, 395.

her sinking, the U.S. government prepared a comprehensive list of all her smuggling activities.¹⁰¹ This list illustrates that from 1924 through 1928, she operated exclusively, and very actively, between the Canadian maritime provinces, the French islands of Saint Pierre and Miquelon,¹⁰² and the northeast coast of the United States.¹⁰³ Only in November 1928 did she shift her area of operations to the Gulf of Mexico, where she was employed until she was sunk.¹⁰⁴

An interesting sequence of correspondence illustrates the nature and extent of the interagency effort by the United States to keep tabs on the I'M ALONE's activities, and the frustrations and dead ends they so frequently encountered in the process. By telegram dated August 25, 1926, the American Consul General in Halifax informed the U.S. Secretary of State that the "I'M ALONE sailed for Habana [sic] yesterday."¹⁰⁵ By telegram dated September 2, the U.S. Treasury Department requested that the United States State Department instruct its consul in Havana to verify her arrival (or nonarrival) there;¹⁰⁶ this request was positively endorsed and forwarded by the U.S. State Department to the consul in Havana by a letter dated September 13, 1926.¹⁰⁷ On December 15, 1926, the consul in Havana advised the U.S. State Department that the Captain of the Port in Havana had advised him via official communication dated December 9, 1926, that "having scrutinized the record books of arrivals of vessels at this port, it does not appear that the schooner I'M ALONE arrived at this port during the

101. Statements from the U.S. Coast Guard on the History of the Operations of the British Schooner I'M ALONE to the Dep't of State (Feb. 10, 1927)(on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 134, Folder 2).

102. The United States had no exchange of information treaty with France, which made these French islands off the southern coast of Newfoundland an attractive hub for smuggling operations. Skoglund, *supra* note 1. As a result, the Canadian Chargé d'Affaires reported that he had "heard that the United States authorities for a time considered the establishment of virtual blockade" of St. Pierre-Miquelon due to the "large volume of liquor traffic at these islands." Despatch from H.H. Wrong to William L. Mackenzie King, *supra* note 33, at 532.

103. See *supra* note 101 and accompanying text.

104. *Id.*

105. Telegram from T. Jaeckel, Am. Consul Gen., Halifax, to Frank B. Kellogg, Sec'y of State (Aug. 25, 1926) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 1).

106. Telegram from L.C. Andrews, Assistant Sec'y, Treasury Dep't, to Frank B. Kellogg, Sec'y of State (Sept. 2, 1926) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 1).

107. Telegram from Wilbur J. Carr, for the Sec'y of State, to Carlton Bailey Hurst, Am. Consul Gen., Havana (Sept. 13, 1926) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 1).

period from August 24, 1926 to December 9, 1926.”¹⁰⁸ The U.S. State Department provided a copy of this letter to the British Ambassador to the United States, Sir Esme Howard, and requested that the British investigate the apparently fraudulent declaration of Cuba as the vessel’s destination on its customs clearance forms.¹⁰⁹ By letter dated April 25, 1927, Great Britain informed the United States that it could not act on the U.S. request, because her promise to do so as expressed in the 1926 *aide memoire* already discussed, “concerned only His Majesty’s government in Great Britain (including the colonies, but not, of course, the Dominions).”¹¹⁰ In other words, because the vessel was of Canadian registry, recourse, if any, could only be had with Canada.

Fortunately, as already discussed, Canada had agreed to take such action. As a result, the I’M ALONE was seized on at least three reported occasions by Canadian authorities for obtaining a false customs clearance, and each time released upon the payment of a \$400 deposit (also characterized as a fine).¹¹¹ This appears to have been, at best, a minor nuisance to her smuggling activities—a cost of doing business, as it were.

The I’M ALONE’s colorful history was matched by the larger-than-life persona of her captain at the time of her sinking,¹¹² Jack Randell, a “swarthy, swaggering bull of a man, a daredevil at sea and a dandy ashore.”¹¹³ His swashbuckling career at sea began at age sixteen, and he

108. Letter from Carlton Bailey Hurst, Am. Consul Gen., Havana, to Frank B. Kellogg, Sec’y of State (Dec. 15, 1926) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 1).

109. Note from Frank B. Kellogg, Sec’y of State, to Sir Esme Howard, British Ambassador to the U.S. (Feb. 2, 1927), *reprinted in* 4 DEP’T OF STATE, *supra* note 19, app. C, annex, at 66. This letter contained as an attachment a chronological list of the I’M ALONE’s smuggling activities from April 30, 1924 to January 8, 1927. *See id.* at 67-71.

110. Letter from Adrian Baillie, British Embassy, to William Roy Vallance, Dep’t of State (Apr. 25, 1927) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 2).

111. These incidents include Yarmouth, Nova Scotia in the fall of 1926; Liverpool, Nova Scotia in 1927; and Lunenburg in the fall of 1927. Letter from W. Henry Robertson, Am. Consul Gen., Halifax, to Frank B. Kellogg, Sec’y of State (Nov. 19, 1926) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 1).

112. U.S. diplomats, in the course of tracking the I’M ALONE’s smuggling activities, had reported to the State Department the names of at least two former captains of the I’M ALONE, Captain Lohnes and Captain Jensen. *See* Correspondence on the *I’m Alone* Case, *supra* note 34, Box 121, Folder 2, Box 120, Folder 2.

113. PATTON, *supra* note 3, at 26. He is reputed to have carried with him a dinner jacket, set of tails, six dress shirts, twelve dress collars, eighteen pairs of silk socks, and a collapsible opera hat. *Id.*

was a master unlimited by age twenty-eight.¹¹⁴ As a master, he dealt with ferocious storms, sharks, and treacherous conditions and people; fended off assaults by maniacal, raving drunk crew members; and unhesitatingly waded into riots with a belaying pin to restore order.¹¹⁵ His global exploits took him to South Africa, where he served first in the Royal Canadian Artillery and later as a mounted scout during the Boer War; as a dredge operator from the west coast of Africa to Russia, where, while helping construct the Reval naval base, he was enlisted by Russian authorities at the outbreak of World War I to get a German spy drunk and retrieve from him the plans to the base that he had stolen; as a big game hunter in Africa; and as an Arctic explorer.¹¹⁶ He commanded a sub chaser in the Royal Navy during World War I and was awarded both the Distinguished Service Cross and the Croix de Guerre.¹¹⁷

He entered the lucrative rum-running business in 1921, where his courage and bravado enabled him to hold his own among the denizens of that trade, hard, dangerous characters he characterized as a “mixed crowd that could be kept under control only by fist and marlinspike and gun.”¹¹⁸ He fought off would-be hijackers off Long Island and was cheated by his partners, causing the loss of his half share of a smuggling vessel and also his pay.¹¹⁹ While in New York City, he received death threats and was advised to leave; this he refused to do, stating: “Tell those crooks you saw me with a gun. I’d welcome a chance to shoot it out with any of them or all of them.”¹²⁰ Following that, he claims that he “stayed in New York City more than a month after that. I carried the gun too. Nobody molested me.”¹²¹ Little wonder, then, that he summed up his credo to a Canadian newspaper as “[o]nce a scrapper, always a scrapper.”¹²²

Despite his obvious thirst for adventure, he was more than a little hesitant when he was approached in 1928 to serve as master of the I'M ALONE for the purpose of running liquor to the United States.¹²³ The hard life of a rum runner had started to pall. Furthermore, he was aware

114. All biographical details, unless otherwise indicated, are from Randell's autobiography. See RANDELL, *supra* note 27, at 112.

115. See generally *id.*

116. See generally *id.*

117. PATTON, *supra* note 3, at 26.

118. RANDELL, *supra* note 27, at 221.

119. *Id.* at 215.

120. *Id.* at 231.

121. *Id.* at 232.

122. *Capt. Randell of I'm Alone is Well-Known*, MONTREAL STAR, Mar. 26, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 4).

123. RANDELL, *supra* note 27, at 261.

that the notorious I'M ALONE had been blacklisted by U.S. authorities, and a stint in U.S. prison did not appeal to him.¹²⁴ Ultimately, however, he was won over by the prospect of good pay during slow winter months¹²⁵ and by assurances that, because the I'M ALONE had changed hands twice since she was last used as a rum runner, there would be no grounds for U.S. authorities to seize her if she kept to the high seas.¹²⁶ He was also brought around by the “modern” business practices that the rum running industry had adopted since its early days.¹²⁷

The modern smuggling practices Randell alluded to were driven by innovations in the law, such as the Convention, and the increased size and proficiency of the Coast Guard. Overt “catch-as-catch-can” sales over the railings to lines of eager consumers at rum rows were a thing of the past.¹²⁸ Now, a sole American buyer would purchase the entire cargo in advance, with payment held in escrow until the liquor was actually delivered.¹²⁹ The only at-sea transaction that would occur would be a transfer at some point on the high seas—presumably more than an hour’s sailing distance from the coast—of the entire cargo to one or several mosquito boats, which would run the gauntlet of enforcement vessels and other assets to deliver the liquor to shore.¹³⁰ By this point, the “mother ship” would be far offshore, immune from U.S. enforcement efforts, already planning details of the next delivery, undoubtedly over a celebratory drink or two.¹³¹

Randell assumed command of the I'M ALONE in October 1928;¹³² and concurrently, her base of operations was shifted to Belize, and her delivery run to the Gulf of Mexico, specifically to the vicinity of the Louisiana coast.¹³³ On a typical operation in the Gulf, Randell would navigate the I'M ALONE to latitude twenty-eight north, longitude ninety-one degrees west,¹³⁴ where, at a prearranged time, a mosquito boat or boats would come out to meet him.¹³⁵ The buyer’s representative would uniquely and definitively identify himself as such by reciting to

124. *Id.* at 265.

125. His pay was to be \$500/month, plus a bonus at the end of each job. *Id.* at 264.

126. *Id.* at 265.

127. *Id.* at 261-63.

128. *Id.* at 262.

129. *Id.*

130. Ricci, *supra* note 2, at 9.

131. RANDELL, *supra* note 27, at 262.

132. *Id.* at 265.

133. S.S. “I’m Alone” (Can. v. U.S.), Joint Final Report of the Commissioners, 3. R.I.A.A. 1609, 1616 (1935).

134. RANDELL, *supra* note 27, at 266.

135. *Id.* at 263.

Randell the serial number on a U.S. dollar bill, which had to match that on one of fifteen half-torn dollar bills that Randell carried.¹³⁶ The buyer also had to produce the other half of the bill, whose irregularly torn edges had to match those of the corresponding half bill that Randell possessed.¹³⁷ This process worked so well that Randell was able to proudly proclaim that he and his crew were able—over the course of several successful voyages—to add “a good many thousand cases of excellent liquor to the markets of the U.S.”¹³⁸

Unbeknownst to Randell and his employers, the U.S. Coast Guard had also shifted assets and resources to the Gulf, perhaps in response to a 1926 survey that tagged New Orleans as America’s “wettest city,” and characterized Louisiana as being “ninety percent wet.”¹³⁹ Included in that shift were six 100-foot high-endurance patrol boats, including the WOLCOTT, DEXTER, and DALLAS, transferred from Boston to Pascagoula.¹⁴⁰ Thirteen vessels of this class had been constructed by Defoe Boat and Motor Works of Bay City, Michigan, to be a workhorse of the “dry Navy.”¹⁴¹ Each displaced 210 tons, was powered by two Grey Marine diesel engines, which delivered 300 horsepower for a top speed of twelve knots, and was armed with one 3-in./23-caliber deck gun and a weapons locker stocked with small arms.¹⁴²

Both the WOLCOTT and the DEXTER had run-ins with the I’M ALONE off the Louisiana coast in late 1928 and early 1929, and in both cases Randell, through speed, guile, and audacity, had managed to shake his pursuers.¹⁴³ This had two consequences. The Coast Guard was aware that the I’M ALONE had shifted her operating environs from the northeast to the Gulf,¹⁴⁴ and both cutter COs, having experienced the professional humiliation of being outwitted by their maritime quarry, had personal reasons to be especially motivated to bring her to bay.

136. *Id.* at 262-63.

137. *Id.* at 263.

138. *Id.* at 271.

139. Ricci, *supra* note 2, at 8.

140. *Id.* at 6.

141. *Id.* at 1.

142. *Id.* at 1, 6.

143. *Id.* at 14, 16.

144. The United States was also aware that Randell had taken over as her skipper. Letter from Erik W. Magnuson, Consul, Halifax, to T. Jaeckel, Am. Consul Gen., Halifax (Nov. 1, 1928) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 2).

IV. PURSUIT AND SINKING

The I'M ALONE's fateful voyage began on March 12, 1929, after a period of rest and relaxation, plus maintenance and repair, in Belize.¹⁴⁵ Her cargo consisted of 500 cases of William Penn rye whiskey purchased in Belize at \$8/case; 300 cases of Johnny Walker Black at \$18/case; 110 demijohns of Carta d'Oro Baccardi rum at \$8/gallon; and 200 cases of mixed champagnes and liquors that averaged \$20/case.¹⁴⁶ Her customs papers declared this cargo and claimed Bermuda as her destination; this information, as well as her departure date, was duly reported to the U.S. State Department by G.R. Taggart, the American Consul in Belize.¹⁴⁷ The I'M ALONE sailed in favorable conditions to her usual rendezvous spot off the New Orleans coast, to which she arrived two days early.¹⁴⁸ Since she had some waiting time and, according to Randell, some outstanding repair items to accomplish, he decided to anchor in the vicinity of Trinity Shoal Light Buoy early in the morning of March 20, 1929.¹⁴⁹ Shortly after anchoring, they observed a vessel, soon identified as the Coast Guard cutter the WOLCOTT, approaching at high speed from the west.¹⁵⁰

The WOLCOTT, under the command of Boatswain Frank Paul, had gotten underway from her base in Pascagoula for a law enforcement patrol two days earlier.¹⁵¹ She had been drifting with the current off the

145. Her previous voyage began on February 2, 1929. On that voyage, her customs clearance forms declared Nassau, Bahamas, as her destination, but U.S. officials were able to verify that she never arrived there. Instead, she returned to Belize in ballast, i.e., without her cargo of liquor, on March 6—which indicated to U.S. officials that she had successfully delivered her cargo of liquor somewhere along the U.S. coast. Letter from F.C. Billard, Commandant, Rear Admiral U.S. Coast Guard, to Andrew Mellon, Sec'y of the Treasury (Mar. 25, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 4).

146. David A. Bagwell, *Freedom of Seas on the Gulf: The I'M ALONE Affair and its Resolution by Commission*, SONS CONFEDERATE VETERANS 9, http://www.scvsemmes.org/uploads/3/1/7/8/3178401/___freedom_of_the_seas_on_the_gulf_-_the_im_alone_affair.pdf (last visited Nov. 1, 2015).

147. Telegram from G.R. Taggart, Am. Consul, Belize, to Dep't of State (Mar. 14, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 3).

148. RANDELL, *supra* note 27, at 284.

149. *Id.*

150. *Id.* at 285.

151. Affidavit of Frank Paul, Boatswain of the WOLCOTT, *enclosed in* Letter from A.L. Gamble, Captain, to F.C. Billard, Commandant (Mar. 28, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 4) [hereinafter Paul Affidavit]. Paul entered the Coast Guard on August 6, 1923, had been a boatswain since April 1, 1925, and took command of the WOLCOTT on December 10, 1928. *Id.* He was one of more than 500 chief petty officers who were temporarily commissioned as warrant officers between 1925 and 1928 to fill newly-created leadership roles in the rapidly expanding Coast Guard. Ricci, *supra* note 2, at 12.

Louisiana coast, an area known for smuggling activity, since 10:30 p.m. on March 19, 1929.¹⁵² While drifting, soundings were taken every thirty minutes.¹⁵³ Melvin L. Matson, chief engineer of the WOLCOTT, had the 4:00 a.m. to 8:00 a.m. deck watch.¹⁵⁴ At 5:55 a.m., just as day began to break, he observed a schooner bearing 091 true, approximately seven miles away.¹⁵⁵ As the dead reckoning position of the WOLCOTT was 10.5 miles from shore and because the shoreline in the vicinity ran slightly south of due east, 094 true, that put the unknown suspicious contact, by their calculations, approximately 10.8 miles from shore.¹⁵⁶ As this was within the twelve-mile limit of the Tariff Act, the vessel, if in violation of Prohibition laws, would be subject to U.S. enforcement action (in the U.S. view, at least) even if foreign.¹⁵⁷ This warranted further investigation. As a result, Boatswain Paul rang up full speed and charged directly toward the suspect vessel, which was soon recognized as the notorious I'M ALONE.¹⁵⁸

As the WOLCOTT approached, smoke was observed coughing from the I'M ALONE, indicating she had started her engines and was getting underway.¹⁵⁹ The WOLCOTT, flying a U.S. flag and Coast Guard ensign, repeatedly sounded four blasts of her whistle as she approached the I'M ALONE as a signal for her to stop; an order that was not obeyed.¹⁶⁰ By 6:30 AM, they were close enough to her to clearly make out her name on the stern and to communicate a verbal order to stop via megaphone again, which was ignored.¹⁶¹ Instead, the I'M ALONE turned to flee southward toward the open Gulf, and the WOLCOTT took up the pursuit.¹⁶²

As the I'M ALONE continued ignoring signals to stop, including the international flag signal L.Q., meaning "heave to," Boatswain Paul

152. Paul Affidavit, *supra* note 151.

153. *Id.*

154. Affidavit of Melvin L. Matson, Chief Eng'r of the WOLCOTT, *enclosed in* Letter from A.L. Gamble to F.C. Billard, *supra* note 151 [hereinafter Matson Affidavit].

155. *Id.*

156. Letter from A.L. Gamble to F.C. Billard, *supra* note 151. Dead reckoning (DR) is essentially an educated guess as to a vessel's position. Starting from a good fix, atmospheric conditions are calculated and their effects on the vessel estimated in order to determine the current DR position. In this case, the WOLCOTT's DR position when she first sighted the I'M ALONE took into account the prevailing wind during the night (eighteen knots southeast) and the set of the current prevailing in the region. Paul Affidavit, *supra* note 151.

157. *See supra* text accompanying notes 36-38.

158. Paul Affidavit, *supra* note 151.

159. Matson Affidavit, *supra* note 154.

160. Paul Affidavit, *supra* note 151.

161. *Id.*

162. Letter from A.L. Gamble to F.C. Billard, *supra* note 151.

organized a party of six volunteers to potentially board her.¹⁶³ However, this tactic was rejected as the “speed maintained by the I’M ALONE was such that it could not be overtaken by a small boat party and its headway and the rough sea forbade any attempt to go alongside with a patrol boat.”¹⁶⁴ In addition, Captain Randell was seen to be armed and was heard by Boatswain Paul and several members of the WOLCOTT’s crew to state, “You can shoot and sink but be damned if you will board me,” and later, “If you board me, I will shoot to kill.”¹⁶⁵ Randell, not surprisingly, denied making such bellicose pronouncements, instead quoting himself as grandiloquently proclaiming, “I will not heave to. . . . I’m on the high seas and you have no jurisdiction over me,” and later, in response to a threat to fire if the I’M ALONE did not heave to, “Shoot if you want.”¹⁶⁶ And shoot is what the WOLCOTT did, in the form of three blanks from her three-inch cannon across the schooner’s bow.¹⁶⁷ The I’M ALONE still did not stop.¹⁶⁸

Around this time, near 8:20 AM, the American tanker HADNOT, en route from Charleston to Port Arthur on a westerly course, observed a schooner (the I’M ALONE), under sail with engines running, off her starboard bow, apparently coming from inshore.¹⁶⁹ The WOLCOTT was about .5 mile astern.¹⁷⁰ Boatswain Paul alertly and presciently realized that the HADNOT could be an invaluable means of verifying and proving the I’M ALONE’s position at the initiation of the pursuit and altered course to intercept her.¹⁷¹ The HADNOT’s captain, after

163. Paul Affidavit, *supra* note 151. As the WOLCOTT’s authorized crew was only two warrant officers and fourteen enlisted crew, and as of March 20 only twelve of the authorized enlisted complement were aboard, fielding even such a small boarding party would have presented Paul with a significant manning challenge. Log of the U.S. Coast Guard Patrol Boat WOLCOTT, entry P159 (March 22, 1929) (on file with the National Archives, Logs of Revenue Cutters and Coast Guard Vessels 1819-1941).

164. Letter from A.L. Gamble to F.C. Billard, *supra* note 151. The I’M ALONE maintained her speed despite the fact that she was sailing directly into a southeast wind. *Id.*

165. Paul Affidavit, *supra* note 151. At 0800 (8:00 AM), the WOLCOTT sent a signal to COMDIV EIGHT stating: “I’M ALONE found ten miles from the shore line . . . they threatened to shoot to kill if boarded advise . . .” Dispatch from the WOLCOTT (Mar. 20, 1929, 8:00 AM), *in* U.S. Coast Guard Official Dispatches (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 4).

166. RANDELL, *supra* note 27, at 286.

167. Paul Affidavit, *supra* note 151.

168. *Id.*

169. Affidavit of J.J. Hutson, Commander of the HADNOT (Mar. 30, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 121, Folder 1) [hereinafter Hutson Affidavit].

170. *Id.*

171. *Id.*

complying with Paul's signaled request to slow down, verified their current position as latitude 29-06, longitude 92-19.¹⁷² Using this known position and applying the speed and duration (1.5 hours) of the pursuit to that point, the Coast Guard was able to determine, with independent verification, the I'M ALONE's position when the pursuit began as latitude 29-24, longitude 92-19, a point not over 8.5 miles from shore.¹⁷³

As the pursuit continued through the morning, an event occurred that illustrated "the peculiar conventions which allow maritime enemies to be gentlemen nonetheless."¹⁷⁴ At approximately 10:25 AM, Captain Randell motioned for the WOLCOTT to close, and after she complied, invited Boatswain Paul aboard for a powwow, on the condition he come alone and unarmed.¹⁷⁵ Paul accepted the invite and conditions, and accordingly boarded the I'M ALONE at approximately 10:55 AM—in his slippers, according to Randell.¹⁷⁶ The two conversed in Randell's cabin for approximately 1.5 hours on a diverse range of topics, and Paul describes the conversation as cordial.¹⁷⁷ However, he did not fail to notice a rifle rack with places for eight rifles located in the cabin; only one rifle was there.¹⁷⁸ He also observed Randell's revolver sitting on the cabin skylight.¹⁷⁹ According to Paul, Randell admitted he was carrying a cargo of liquor destined for America; he claimed he had anchored because of a breakdown in his engines and to have been anchored fourteen miles off the coast.¹⁸⁰ Randell claims that Paul felt the I'M ALONE was 13.5 miles from the Louisiana coast when sighted, but that she could make 14 knots—which meant that pursuit began while she was within the one-

172. *Id.*

173. The fortuity and value of this independent corroborative source regarding the critical issue of the I'M ALONE's position at the beginning of the pursuit was not lost on the Coast Guard. Coast Guard headquarters directed COMDIV EIGHT on March 21, during the ongoing pursuit, that "[i]f you are satisfied I'M ALONE was within twelve miles when she refused boarding, use all your force to seize her. Be sure original position can be verified. Stop Keep Headquarters advised." Letter from F.C. Billard to Andrew Mellon, *supra* note 145. In response COMDIV EIGHT at 1845 (6:45 PM), March 23, 1929, sent a message to the master of the HADNOT requesting that he "please advise time and position steamship HADNOT passed Coast Guard cutter WOLCOTT and schooner morning March twenty." Dispatch from COMDIV EIGHT to Gulf Div., the WOLCOTT (Mar. 23, 1929, 6:45 PM), *in* U.S. Coast Guard Official Dispatches, *supra* note 165. This apparently led to the sworn affidavit by the HADNOT's master. See Hutson Affidavit, *supra* note 169.

174. Skoglund, *supra* note 1.

175. Paul Affidavit, *supra* note 151.

176. RANDELL, *supra* note 27, at 87.

177. There is no record of whether Randell offered and whether Paul accepted a convivial alcoholic beverage to break the social ice. Paul Affidavit, *supra* note 151.

178. *Id.*

179. *Id.*

180. *Id.*

hour's steaming distance.¹⁸¹ This somewhat extraordinary conference closed with Randell reiterating that he would never allow his vessel to be boarded, but would rather let her be sunk.¹⁸² On that note, Paul departed, and the I'M ALONE resumed her southward flight, with the WOLCOTT hot on her heels.¹⁸³

Any good feelings that may have emanated from the meeting quickly dissipated, and the WOLCOTT resumed firing shortly after it ended.¹⁸⁴ Prior to commencing fire, Paul again signaled for the I'M ALONE to stop, this time followed by a warning that he would resume firing in fifteen minutes if she did not.¹⁸⁵ He also hoisted the international signal "I.D.," meaning "I intend to commence firing."¹⁸⁶ Randell responded in the "negative" by return signal and claimed to have verbally informed Paul, "I have no intention of stopping."¹⁸⁷ You need not waste the 15 minutes."¹⁸⁸ Firing commenced at around 2:00 p.m. with three blank shots across her bow.¹⁸⁹ This was followed by live ammunition from the deck gun.¹⁹⁰ It was obvious to Randell that the WOLCOTT was aiming high, since the vessels were so close to each other that they could hardly have missed hitting the hull if that was their intention.¹⁹¹ Holes began appearing in the I'M ALONE's sails, and some rigging and tackle were shot away.¹⁹²

Then, after about twenty rounds had been fired, the 3-inch gun misfired and jammed, injuring one of the WOLCOTT's sailors.¹⁹³ The WOLCOTT switched to rifle and machine gun fire and, according to

181. RANDELL, *supra* note 27, at 291. This is at variance with the 10.8 mile distance reported by Paul in official reports made only days after the incident. Paul Affidavit, *supra* note 151.

182. Paul Affidavit, *supra* note 151.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* Paul asserted that during the conference aboard the I'M ALONE, Randell had asked for a ten minute notice before firing commenced; Paul actually gave him a thirty minute notice. Testimony of Frank Paul, Boatswain of the WOLCOTT (May 21, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 7) [hereinafter Paul Testimony].

187. RANDELL, *supra* note 27, at 294.

188. *Id.*

189. Paul Affidavit, *supra* note 151.

190. *Id.*

191. RANDELL, *supra* note 27, at 295.

192. *Id.* at 294-95. Paul had advised Randell to keep his men aft or below so they would not be injured by falling tackle. Paul Testimony, *supra* note 186.

193. Paul apprised his command via message at 3:00 PM that the gun had misfired and was jammed, resulting in an injury. A later message identified the injured man as Edward Jager, and stated that the injury was to his "left arm impossible say extent of injury arm bruised badly also swollen unable to move due to pains." U.S. Coast Guard Official Dispatches, *supra* note 165.

Randell, “bullets began to sing around us.”¹⁹⁴ As Randell stood at the rail observing the WOLCOTT, he suddenly felt searing pain in his leg, which went numb.¹⁹⁵ Fearing the worst, he looked down at his limb, “expecting to see blood running.”¹⁹⁶ Instead, he saw a hard wax bullet on deck, a nonlethal munition used by police for riot control and related purposes, reported to have been fired by a Thompson submachine gun in the WOLCOTT’s arsenal.¹⁹⁷

Eventually, realizing that Randell intended to remain true to his refusal to willingly stop, and denied, through sea state or weapon malfunction, the means to compel him to do so, Paul ordered a cease fire and dropped astern, resuming the pursuit.¹⁹⁸ Randell had won round one, but the Coast Guard, feeling it finally had the notorious I’M ALONE in its grasp, was not about to give up so easily. Pursuit continued all night March 20, all day and night on March 21, and into March 22, all the while on a general southerly course.¹⁹⁹ Randell obviously was not privy to Coast Guard message traffic; had he been, even a swashbuckler like him might have been discomfited by an ominous message sent to the WOLCOTT as the chase continued, and by her response:

FROM COMDIV EIGHT to Wolcott, 1120, 21 March—under no conditions allow black²⁰⁰ to escape seize and tow to New Orleans
Wolcott 21 Mar 1450 to COMDIV EIGHT—will not allow black to escape will again try to seize her when weather improves have shot through sails also British flag previous shells fouled muzzle master appears desperate have not enough men to board her will take long chance if other boats do not arrive tomorrow.²⁰¹

The WOLCOTT’s mention of “other boats . . . arriv[ing] tomorrow” in her March 21 message was a reference to the anticipated arrival of her sister cutter, the DEXTER, dispatched to assist her to bring the I’M ALONE to bay, and expected on scene on March 22.²⁰² Sure enough, at

194. RANDELL, *supra* note 27, at 295.

195. *Id.*

196. *Id.* at 295-96.

197. Ricci, *supra* note 2, at 18, 19.

198. RANDELL, *supra* note 27, at 297.

199. *Id.*

200. The word “black,” in enforcement parlance, meant a liquor smuggling vessel. Ricci, *supra* note 2, at 1.

201. U.S. Coast Guard Official Dispatches, *supra* note 165.

202. Both cutters the DALLAS and the DEXTER had been ordered by the commander of Coast Guard Base Pascagoula, Lieutenant Commander A.H. Bixby, to go to the WOLCOTT’s assistance; however, the DALLAS had engine trouble and could not respond. Ricci, *supra* note 2, at 20. The DEXTER got underway at 5:30 PM on March 20. Affidavit of Alfred W. Powell, Commander of the DEXTER, *enclosed in* Letter from A.L. Gamble to F.C. Billard, *supra* note 151 [hereinafter Powell Affidavit].

7:25 a.m. on March 22, the DEXTER hove into view, and by 7:45 a.m. had closed to within hailing distance of the WOLCOTT.²⁰³ Boatswain Paul briefed the DEXTER's captain, Boatswain A.W. Powell, regarding the current situation.²⁰⁴ They arranged that the DEXTER would "make the necessary show of force to compel the I'M ALONE to stop, and that the crew of the WOLCOTT would perform the boarding duty, if any."²⁰⁵ Without further ado, the DEXTER charged alongside the I'M ALONE's starboard quarter and, at 8:04 a.m., with her national ensign, Coast Guard ensign, and Coast Guard pennant snapping in the brisk breeze, ordered her to stop.²⁰⁶

Randell, true to form, refused to comply, heroically proclaiming—at least, according to him—"[y]ou have no jurisdiction over me and I refuse to heave to."²⁰⁷ At 8:13 a.m., Powell commenced fire with a blank (saluting) charge from the DEXTER's 3-in. gun, which he followed with a renewed demand that the I'M ALONE heave to.²⁰⁸ Randell refused, indicating by gestures that he would allow the schooner to be sunk rather than comply.²⁰⁹ Two minutes later, Powell directed a 3-in. shot across her bow, which again had no effect.²¹⁰ These lesser instruments of compulsion having failed, Powell, at 8:22 a.m., directed his crew to begin firing at the I'M ALONE with a combination of cannon, pistol, and rifle fire, all from a range of less than 200 yards.²¹¹

The intensity of the fire, and the threat it posed to the I'M ALONE's crew, varied according to the perspective of the teller. According to Powell, the rifle fire was aimed at drums and tanks with the hope of depriving her of essentials such as fuel and water, thus compelling her to

203. Powell Affidavit, *supra* note 202.

204. Boatswain Powell was thirty years old, had entered the Coast Guard August 1924, and had been in command of the DEXTER since May 1927. *Id.* Like Paul, Powell was a chief petty officer temporarily advanced to warrant officer. Paul Affidavit, *supra* note 151.

205. Powell Affidavit, *supra* note 202.

206. Paul Affidavit, *supra* note 151; Log of the U.S. Coast Guard Patrol Boat DEXTER, entry P159 (March 22, 1929) (on file with the National Archives, Logs of Revenue Cutters and Coast Guard Vessels 1819-1941). Randell reports that in addition to a verbal order to stop, the DEXTER flew the signal flags "Heave to or I fire at you." RANDELL, *supra* note 27, at 298.

207. RANDELL, *supra* note 27, at 298. Powell more tersely reports that Randell refused, pointing to the British flag. Powell Affidavit, *supra* note 202.

208. *Id.*; Log of the U.S. Coast Guard Patrol Boat DEXTER, *supra* note 206.

209. Powell Affidavit, *supra* note 202.

210. *Id.*

211. RANDELL, *supra* note 27, at 299. Powell claims that at times the distance was only twenty-five yards. Testimony of Alfred W. Powell, Boatswain of the DEXTER (May 21, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 7) [hereinafter Powell Testimony].

submit rather than be sunk.²¹² He claims that he directed his crew to use every precaution to avoid hitting those aboard the I'M ALONE, and as they all appeared to be assembled aft, he directed his crew to fire toward her rigging and main deck forward.²¹³ As a result, "not a single shot [hit her] abaft midships."²¹⁴ According to Randell, shells from the DEXTER tore into the deckhouse just in front of where they were huddled; the rigging was cut to bits; booms, boats, and bulwarks were all smashed.²¹⁵

Once again, Powell ordered a cease fire, and demanded the I'M ALONE heave to.²¹⁶ Ever heroic, Randell relates that he responded, "No, damn you! You may sink me if you like, but I will not surrender!"²¹⁷ At this, the DEXTER resumed her fire, this time into the hull of the schooner.²¹⁸ Round after round crashed into the I'M ALONE, both above and at the waterline.²¹⁹ Hatches burst open, and shattered glass from the liquor cargo showered her crew.²²⁰ Fortuitously, none of Randell's men were struck "except by splinters, which were flying all around . . ."²²¹

At about 8:55 a.m., a shell hit the I'M ALONE "well below the waterline slightly forward [of] the mainmast, and tore a large hole in her side."²²² This proved to be the beginning of the end. She started rapidly taking on water, and when the chief engineer reported water over the engine room floor, Randell ordered the engines, which had been running the entire time, to stop.²²³ Despite their predicament, Randell reports that when he sounded out to his crew, "Should we surrender?," they returned a chorus of negative responses.²²⁴ At Randell's order, they began throwing overboard anything that would float, particularly the pieces of

212. Powell Testimony, *supra* note 211. Powell also claims that as a result of the close proximity of the two vessels, there was no danger of hitting the I'M ALONE personnel. *Id.*

213. Powell Affidavit, *supra* note 202.

214. *Id.*

215. RANDELL, *supra* note 27, at 299.

216. Powell Affidavit, *supra* note 202.

217. RANDELL, *supra* note 27, at 300.

218. *Id.*

219. All told, the DEXTER expended two rounds of saluting ammunition, thirty-eight of 3-in. shell, four hundred rounds of .30 cal. rifle ammunition, and nine rounds of .45 cal. pistol shot. Log of the U.S. Coast Guard Patrol Boat DEXTER, *supra* note 206.

220. RANDELL, *supra* note 27, at 301.

221. *Skipper of Drys' Target Says I'm Alone Was Sunk Insisting on Rights at Sea*, TIMES-PICAYUNE, Mar. 25, 1929, at 2.

222. Powell Affidavit, *supra* note 202.

223. RANDELL, *supra* note 27, at 302.

224. *Id.* at 302. The United States later asserted that at least two I'M ALONE crew members stated in depositions that her crew had implored Randell to obey the Coast Guard order to stop. Letter from Henry L. Stimson, Sec'y of State, to Vincent Massey, Canadian Minister (Apr. 17, 1929), *reprinted in* 2 DEP'T OF STATE, *supra* note 16, at 41.

the broken boats—anything that could keep men afloat.²²⁵ He and his crew—he going last—leaped overboard as the I'M ALONE sank by the head, Union Jack still flying, at 9:03 a.m. on March 22, 1929, more than 200 miles from the U.S. coast.²²⁶

Their travails were by no means over. At the time of her sinking the winds were fresh and the seas rough, so much so that Randell reported that the DEXTER was decking water and showing her bilge keel on almost every roll.²²⁷ Randell claims that he almost drowned.²²⁸ The cutters lowered their dories to pick up survivors; others, including Randell, were hauled aboard by means of lines.²²⁹ When one of the I'M ALONE's crew members was observed to be struggling and slipped under the surface, Charles B. Raeburn, Sea.1c from the DEXTER, dove into the water to assist him.²³⁰ Edward Jager, Sea.2c of the WOLCOTT, the same man whose left arm had been injured in the gun misfire two days previously, leaped overboard to assist Raeburn, who was towing the unresponsive crew member and appeared to be exhausted.²³¹ Eventually, the incapacitated I'M ALONE crew member, Leon Mainguy, and three others of the I'M ALONE's crew were rescued by the WOLCOTT, while Randell and four others of his crew were taken aboard the DEXTER.²³² Two of the DEXTER's crew members who were considered to be experts in resuscitation were sent to the WOLCOTT to help minister to Mainguy.²³³ Unfortunately, notwithstanding their efforts, he was determined to be dead at 11:45 a.m.²³⁴

V. RETURN TO PORT AND REACTION

After a fruitless search for wreckage, the WOLCOTT informed her command that “black sunk in latitude 25 41 long[itude] 90 25 time 905

225. RANDELL, *supra* note 27, at 302-03. She was not equipped with any life preservers. Letter from A.L. Gamble to F.C. Billard, *supra* note 151.

226. RANDELL, *supra* note 27, at 303; Log of the U.S. Coast Guard Patrol Boat DEXTER, *supra* note 206. Her resting place is in 2000 fathoms of water in an area known as the Sigsbee Deep. Powell Affidavit, *supra* note 202; Ricci, *supra* note 2, at 21.

227. Letter from F.C. Billard to Andrew Mellon, *supra* note 145. According to Randell, there were moderate gale conditions at the scene. RANDELL, *supra* note 27, at 305.

228. RANDELL, *supra* note 27, at 305.

229. Log of the U.S. Coast Guard Patrol Boat DEXTER, *supra* note 206.

230. Powell Affidavit, *supra* note 202.

231. Log of the U.S. Coast Guard Patrol Boat WOLCOTT, *supra* note 163.

232. Paul Affidavit, *supra* note 151; Powell Affidavit, *supra* note 202. Mainguy, whose name also appears in the records as Maingoy and Maingoi, was a French Algerian who lived in St. Pierre. Ricci, *supra* note 2, at 22.

233. Paul Affidavit, *supra* note 151; Powell Affidavit, *supra* note 202.

234. Log of the U.S. Coast Guard Patrol Boat WOLCOTT, *supra* note 163.

stop total persons number eight and one corpse,²³⁵ after which the two cutters set off at full speed toward New Orleans.²³⁶ As to the corpse, Mainguy, the WOLCOTT reported that the “man apparently was drunk also face bruised badly and unable to swim.”²³⁷ Randell and the other survivors were clapped in irons, and the crew members were kept separated from each other.²³⁸ When this treatment of the crew was later questioned by Canadian officials, the United States stated that official Coast Guard policy was that if cutters were not fitted with brigs—which neither the DEXTER nor the WOLCOTT were—by general Coast Guard instruction, prisoners were to be restrained and separated.²³⁹ Further, the use of irons was considered to be preferable to rope lashings because irons could be adjusted so as to cause little inconvenience and no pain.²⁴⁰

The cutters arrived in New Orleans on March 24.²⁴¹ The prisoners were delivered to H.S. Creighton, Supervising Customs Agent, at approximately 9:00 a.m. that day.²⁴² Randell and his crew were arraigned before the United States Commissioner and charged with “conspiracy to violate the Volstead Act” and “interfering with a customs officer in the performance of his duties.”²⁴³ Randell was released on \$500 bond, while his crew was released on their own recognizance on March 27.²⁴⁴ Mainguy’s corpse was retained on board the WOLCOTT until

235. U.S. Coast Guard Official Dispatches, *supra* note 165.

236. Log of the U.S. Coast Guard Patrol Boat DEXTER, *supra* note 206.

237. U.S. Coast Guard Official Dispatches, *supra* note 165.

238. RANDELL, *supra* note 27, at 308; U.S. Coast Guard Official Dispatches, *supra* note 165. In an undoubted reflection of the personalities of the respective commanders, Boatswain Paul of the WOLCOTT put his prisoners in irons only at night when his crew was sleeping; during the day, they were released but housed in separate compartments. Paul Testimony, *supra* note 186. Boatswain Powell, on the other hand, put his five survivors in shackles and in leg irons, because he considered them to be “dangerous prisoners” who needed to be kept “under complete control.” He also put an individual guard over the master and another over the other four prisoners, who he kept separate from the master. Powell Testimony, *supra* note 211.

239. In a memo from Commandant F. C. Billard, entitled “Principles of Naval Security”, the Commandant stated that “Headquarters is of the opinion that too much trust is being placed in the smuggling fraternity, all occasioned by inexperience. Such prisoners are criminals and they are to be treated as such.” Memorandum from F.C. Billard, Commandant, on Principles of Naval Sec. to All Divs., Section Bases, and Dists. (Nov. 20, 1928) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 107, Folder 5). This pronouncement was motivated by the murder of Boatswain Sanderlin and other instances of violence against Coast Guard officers, often the product of lax security practices. *See* discussion *supra* note 70.

240. Letter from Andrew Mellon, Sec’y of Treasury, to Henry L. Stimson, Sec’y of State (Apr. 27, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 6).

241. Paul Affidavit, *supra* note 151.

242. *Id.*

243. Ricci, *supra* note 2, at 23.

244. *Id.*

arrangements for his disposition were made by federal officers in New Orleans.²⁴⁵ Because of the extensive mutilation to his face, an autopsy was conducted by New Orleans Public Health Officers under the direction of Surgeon William Colby Rucker.²⁴⁶ This procedure determined the cause of death to be drowning, with the mutilation presumably resulting from his head coming in contact with some object as he leapt overboard.²⁴⁷ His body was delivered to the British Consulate in New Orleans for burial in St. Louis Cemetery on March 26.²⁴⁸

The I'M ALONE's sinking caused an immediate sensation, containing as it did elements of a wild-west maritime drama replete with swashbuckling personas, all within the context of the wet-dry debate that was consuming America at the time. Randell contributed to the circus-like atmosphere by his interactions with the media upon his release on bail. True to form, he unabashedly admitted that he and his crew were bootleggers, and that he "went into this liquor trade with my eyes open. I knew all the risks but I never expected a raw deal like this."²⁴⁹ He upped the ante several days later, proclaiming to the press that "[t]here was no more cowardly act, since the operations of the German submarines, than this act of shooting my ship from under me."²⁵⁰ He took special umbrage at press reports that U.S. Attorney Edmond E. Talbot and Assistant Commissioner Frederick Wallis of the Immigration Service "concurred in a belief that the schooner carried 'live cargo' and drugs as well as contraband liquor."²⁵¹ He claimed, in response, that he "would have shot a member of his crew had the man tried to bring narcotics or aliens aboard to be smuggled."²⁵²

The drama surrounding the incident was only increased when, on April 9, 1929, the United States dismissed the charges against Randell and his crew.²⁵³ As the Attorney General explained in a letter to the

245. Paul Affidavit, *supra* note 151.

246. Letter from A.L. Gamble to F.C. Billard, *supra* note 151.

247. *Id.*

248. *Id.*

249. *London Associated Press Despatch*, WASH. EVENING STAR, Mar. 27, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 5); *see also* Skoglund, *supra* note 1.

250. *Two World Powers May Take Offense at Sinking of Ship*, TIMES-PICAYUNE, Mar. 25, 1929, at 3.

251. *Probe Launched in U.S. Sinking of British Ship*, TIMES-PICAYUNE, Mar. 24, 1929, at 1. The officers "bas[ed] their attitudes upon the stubborn refusal of the vessel to surrender." *Id.*

252. *Skipper of Drys' Target Says I'm Alone Was Sunk Insisting on Rights at Sea*, *supra* note 221, at 1.

253. Letter from William DeWitt Mitchell, Att'y Gen., to Henry L. Stimson, Sec'y of State (Apr. 10, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 5).

Secretary of State, the complaint filed was “based largely” on written statements and admissions made by Captain Randell.²⁵⁴ Customs and Prohibition authorities worked feverishly to obtain corroboration of Randell’s admissions; however, their opportunity to do so was extremely limited due to the savvy demand by the defendants’ counsel for an immediate hearing on the charges, which was scheduled for March 26, 1929.²⁵⁵ The government was able to obtain, over defense objection, two week-long continuances;²⁵⁶ however, when corroborative evidence failed to materialize during that period, the government was reluctantly forced to dismiss the charges.²⁵⁷ A press release issued concurrently with the dismissal stressed that “dismissal of the criminal case against the crew is not to be construed as in any way affecting the legal justification of the Coast Guard cutters for their action in order[ing] the I’M ALONE to submit to a search and in their pursuit and sinking of the schooner.”²⁵⁸

Reaction to the sinking in affected nations was swift and alternately virulent or measured, depending on the viewpoint of the commentator. British newspapers blared headlines such as “BRITISH SEAMEN IN MANACLES, BRITISH FLAG FIRED UPON BY AMERICAN COAST GUARD.”²⁵⁹ The *Washington Star*, in a March 26, 1929, article entitled “British Public Stirred,” proclaimed that “[t]he I’M ALONE rum-running affray has stirred greater interest among the British public than any incident since the Anglo-American Treaty of 1923 The newspapers give the story big headlines, with emphasis on Captain Randell’s defiant attitude and such details as the crew being placed in irons.”²⁶⁰ On the other hand, the *Chicago Daily News* reported that “British opinion is distinctly averse to making a national hero out of a buccaneer, however picturesque, who admittedly was engaged in trying

254. *Id.*

255. *Id.* According to the Boston Evening Transcript, “it is manifestly impossible to use [Randell’s] statement as the only proof of the government’s charges against him.” *Cannot Prove Conspiracy in I’m Alone Case?*, BOS. EVENING TRANSCRIPT, Mar. 29, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 7).

256. Letter from William DeWitt Mitchell to Henry L. Stimson, *supra* note 253.

257. *Id.*

258. Press Release, Dep’t of Justice, Dismissal of Criminal Proceedings Against “I’m Alone” Crew (Apr. 9, 1929), *enclosed in* Letter from William DeWitt Mitchell to Henry L. Stimson, *supra* note 253.

259. Skoglund, *supra* note 1.

260. *British Public Stirred*, WASH. STAR, Mar. 26, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 4).

to break the laws of a friendly country.”²⁶¹ Regardless of public perception, the British government covertly, and later overtly, supported Canada in her diplomatic sparring with the United States related to this incident.²⁶²

There was no mistaking British sentiment in Belize, from whence the I'M ALONE operated at the end of her career, and home to several of her crew. G.W. Taggart, the American Consul in Belize, reported that once word was received of the sinking,

the atmosphere was not conducive to much pleasantness. The conduct of our Coast Guard was characterized as “most exTRAOrdinary” and the conversation at five o'clock tea time at the Golf Club was devoted exclusively to a discussion of the “bally outrage,” “interference with our commerce,” etc., and the Governor had a difficult time keeping his monocle adjusted while he pondered over the idea of mustering the Territorial Defense Force of British Honduras and commencing an invasion of the U.S.A.²⁶³

On a more serious note, Taggart reports receiving two anonymous letters on March 29, 1929 both dated the day previous, one printed in large ink letters, the other typewritten.²⁶⁴ Both threatened personal injury if he did not leave Belize immediately.²⁶⁵ The typed letter informed him that “7 of us signed.”²⁶⁶ As a result, special police protection had to be provided for him, at least until the high feelings resulting from the incident died down.²⁶⁷

261. Edgar Ansel Mowrer, *British Avoid Making Issue of Rum Sinking*, CHI. DAILY NEWS, Mar. 26, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 4).

262. The covert support was expressed in a confidential memo from Sir Esme Howard, British Ambassador to the United States, to the Canadian legation. Joseph A. Hackett, *The I'M ALONE: A Case Study in Canadian-American Relations* 15 (1981) (unpublished M.A. thesis, Concordia University) (on file with Concordia University Library). This was made public in the British House of Commons during a speech by Sir Austen Chamberlain. *Id.*

263. Note from G.W. Taggart, Am. Consul, Belize (Mar. 30, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 4).

264. Voluntary Report from G.W. Taggart, Am. Consul, Belize, on Copies of Clearance Papers of I'M ALONE, to Dep't of State (Apr. 9, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 5).

265. *Id.*

266. *Id.*

267. *Consul Given Protection*, WASH. STAR, Mar. 28, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 6).

In Canada, which, as the State of registry of the I'M ALONE, was most directly aggrieved by the U.S. action,²⁶⁸ “American stock” sank lower “than it ha[d] been in a long time.”²⁶⁹ Resentment towards the United States had long been building in Canada, mostly as a result of friction related to Prohibition, which caused frequent vilification of the United States in the Canadian Parliament and press.²⁷⁰ The I'M ALONE matter simply added “fresh fuel to the fire of dissatisfaction which ha[d] long existed in Canada regarding the American prohibition laws.”²⁷¹ Publications opposed to Prohibition lambasted the United States with epithets such as “ruthless,” “ungrateful,” and “hypocritical.”²⁷² The *Montreal Star* called the shackling of I'M ALONE crew “the stupid action of an ignorant and angry man, drunk with a little authority.”²⁷³ Even members of the Canadian Parliament joined the intemperate chorus, one deriding the I'M ALONE's sinking as “an act of war, or . . . deliberate piracy.”²⁷⁴ Though there were countervailing sentiments expressed in Canadian media and by politicians more favorably inclined toward Prohibition, which prompted one U.S. diplomat to characterize Canadian reaction to the incident “taken as a whole” to have been “temperate and restrained in tone,”²⁷⁵ there was clearly anger and resentment in Canada toward what was perceived as excessive zeal in furtherance of a law enforcement operation that was in violation of the law of the sea or any treaty that modified it.²⁷⁶

Reaction within the United States was a mixture of jingoism or conciliation, again undoubtedly a reflection of whether the speaker leaned “wet” or “dry.” The *Cleveland Press* opined that “[t]o be sure, the ship was probably a rum runner, but the seas are free. We do not own the

268. The I'M ALONE was officially considered to be a British schooner of Canadian registry. G.G. Fitzmaurice, *The Case of the I'M ALONE*, 17 BRIT. Y.B. INT'L L. 82, 82 (1936).

269. Frederic William Wile, *I'M ALONE Incident Irsome to Canada*, WASH. STAR, Mar. 28, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 6).

270. *Id.*

271. *Id.*

272. Skoglund, *supra* note 1.

273. *Officials Seeking Details*, MONTREAL STAR, Mar. 26, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 4).

274. William H. Seiner, *A Barricade of Ships, Guns, Airplane and Men: Arming the Niagara Border, 1920-1930*, 38 AM. REV. CANADIAN STUD. 429, 432 (2008).

275. Letter from William Philips, U.S. Legation, Ottawa, to Henry L. Stimson, Sec'y of State (Apr. 2, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 5).

276. Stephen T. Moore, *Defining the “Undefended”: Canadians, Americans, and the Multiple Meanings of Border During Prohibition*, 34 AM. REV. CANADIAN STUD. 3, 10 (2004).

seas yet, and we cannot dry them up under the Volstead Act.”²⁷⁷ Chairman Britten of the House Naval Committee agreed, remarking, “If any government desired to pursue the practice of using force such as was carried out in the I’M ALONE affair, it should have the largest navy in the world so that it could dictate terms to other governments.”²⁷⁸ On the other side of the wet-dry divide, Congressman Hamilton Fish of New York stated that the United States should purchase all British possessions in the Caribbean to prevent them from being used as “smugglers’ nests”;²⁷⁹ he also suggested that if Britain demanded damages for the sunken I’M ALONE, she should be pressed to exchange her Caribbean possessions for U.S. liquidation of her war debt.²⁸⁰ Congressman Stephen F. Porter of Pennsylvania wanted the I’M ALONE raised in order to ascertain whether she was carrying narcotics.²⁸¹

The Coast Guard was relieved at the demise of “the most persistent and successful rum-runner they ever chased,” which for four years “taunted the coast patrol until they chased her, and then showed them her heels and escaped.”²⁸² However, the service also realized that its actions were likely to be carefully scrutinized, and it was quick to act. Captain Aaron L. Gamble, commander of Coast Guard forces in the Gulf, “an officer of long service and of excellent judgment,” was dispatched to meet the cutters upon their arrival in the Mississippi River.²⁸³ He sent a two-telegram report (one, regarding confidential matters, in code) on March 24, which provided the grist for the initial investigative report issued by the Commandant, F.C. Billard, to the Secretary of the Treasury, on March 25, 1929.²⁸⁴ Gamble reported that “[a]t time of sinking sea was rough, wind fresh, and black kept speed of five knots and refused to

277. *Our Foreign Dry Relations*, CLEV. PRESS, Mar. 26, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 4).

278. *Sinking of I’M ALONE Attacked by Britten*, WASH. STAR, Mar. 27, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 5).

279. Ricci, *supra* note 2, at 34.

280. Skoglund, *supra* note 1.

281. Ricci, *supra* note 2, at 34.

282. *Patrol Here Relieved: I’m Alone Most Successful Rum Runner Ever Chased*, BOS. HERALD, Mar. 26, 1929 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 139, Folder 4).

283. Letter from F.C. Billard to Andrew Mellon, *supra* note 145. When in command of the cutter SENECA, then-Commander Gamble seized the HENRY L. MARSHALL, owned by the “founder” of rum row, Captain Bill McCoy, and her cargo of 1500 cases of liquor in August 1921. CANNEY, *supra* note 3, at 5.

284. Letter from F.C. Billard to Andrew Mellon, *supra* note 145. The letter contains as an enclosure a summary of the I’M ALONE’s recent history from December 27, 1927, through the date of her sinking.

heave to”²⁸⁵ and that the “[m]aster was armed and words and actions threatening.”²⁸⁶ Consequently, he concluded, not surprisingly, the “Coast Guard action [was] proper and commendable” and the “sinking [was] justified.”²⁸⁷ Gamble submitted a much more extensive report to the Commandant on March 28, 1929, that contained affidavits from the commanding officers of the two cutters, as well as from the officer on watch aboard the WOLCOTT when the I’M ALONE was first sighted on March 20.²⁸⁸ In this report, Gamble opines that “[i]f there had been life preservers in the schooner’s equipment, this drowning need not have occurred.”²⁸⁹

Of note, the Commandant, in his March 25 report to the Secretary of the Treasury, focused solely on the I’M ALONE’s alleged violation of the Tariff Act of 1922 and its four-league (twelve-mile) distance as the basis for the law enforcement operation rather than focusing on the Convention.²⁹⁰ He also referenced the Canadian *North* case²⁹¹ as the “precedent” for hot pursuit into the high seas.²⁹² The Commandant’s focus on the Tariff Act was mirrored by reporting in the press; for example, the *Montreal Star* reported that “federal officials say if the sunken ship was first sighted within 12 miles of the shore of the U.S., coastguard boats were within the law when they pursued her.”²⁹³ It was not until several days had elapsed that the U.S. Coast Guard issued a supplemental statement to the press in which it said, “Not only was the I’M ALONE within four leagues of the coast, but she was squarely within treaty limitations [i.e., in Convention waters].”²⁹⁴ In this second statement, the Coast Guard further pronounced, “There is no doubt whatever that there was hot, continuous and unbroken pursuit of the smuggler from the time she was first sighted until she was sunk.”²⁹⁵

285. *Id.*

286. *Id.*

287. Despatch from A.L. Gamble (Mar. 24, 1929), *enclosed in* Letter from F. C. Billard to Andrew Mellon, *supra* note 145.

288. Letter from A.L. Gamble to F.C. Billard, *supra* note 151.

289. *Id.*

290. *Id.*

291. *See* discussion *supra* note 67 and accompanying text.

292. Letter from F.C. Billard to Andrew Mellon, *supra* note 145.

293. *Officials Seeking Details*, *supra* note 273.

294. Dennis, *supra* note 66, at 352.

295. *Id.*

VI. DIPLOMATIC SPARRING

Americans officials had first provided the British Ambassador with a courtesy notification of the I'M ALONE's sinking.²⁹⁶ However, Britain demurred, as she was of Canadian registry, and the responsibility for any resultant diplomacy rested in His Majesty's Government in the Dominion of Canada.²⁹⁷ The Canadian government disagreed with much of what the Coast Guard had to say, particularly that the Coast Guard's actions were "proper and commendable" and that the "sinking [was] justified."²⁹⁸ Thus, it came to be that Canadian Chargés d'Affaires, Vincent Massey, initiated the process that ultimately led to the arbitration by making a personal visit to the State Department on March 26, 1929, asking for details of the sinking.²⁹⁹

The response to this visit came in the form of a letter sent on March 28, 1929, from W.R. Castle Jr., acting Secretary of State.³⁰⁰ In it, the United States asserted that the I'M ALONE was first sighted on March 20 "within approximately" 10.5 miles of the shore; that the WOLCOTT "kept in close chase" and was "at all times within sight of" the I'M ALONE during the pursuit; that warning shots were fired, and when they were ignored, her rigging, and later her hull, were shot at; that the sea state made a boarding impossible; and that the master had waved a revolver in a threatening manner, implying that force would be used to resist any such attempt.³⁰¹

Massey apparently found such a perfunctory explanation, written by an underling no less, to be less than satisfying, and he therefore hand-delivered a detailed rebuttal to Secretary of State Stimson on April 9.³⁰² He also verbally raised five points with Stimson which he kept out of his rebuttal memo, for "all five of which they were inclined to think [the United States'] action unjustifiable": (1) putting the crew in shackles, (2) concealing the death of Mainguy from the master, (3) alleged mutilation of the British flag, (4) use of rifle fire during the course of the

296. See Correspondence on the *I'm Alone* Case, *supra* note 34, Box 120, Folder 4.

297. Fitzmaurice, *supra* note 268, 84 n.2. This was a reflection of Canada's new status as an "independent power." See discussion *supra* note 38.

298. For the Coast Guard's description of their actions, see *supra* text accompanying note 309.

299. Letter from William Richards Castle, Jr., Acting Sec'y of State, to Vincent Massey, Canadian Minister (Mar. 28, 1929), *reprinted in* 2 DEP'T OF STATE, *supra* note 16, at 23-24.

300. *Id.* This was a period of transition in the United States. The Secretary of State at the time of the sinking was Kellogg, and Stimson took over as Secretary of State on March 29, 1929. *Id.*

301. *Id.*

302. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 28.

sinking, and (5) refusal to allow the master to consult with British consul immediately after he was brought into port.³⁰³ Apparently, Massey wished to minimize undue public focus on these five important, yet inflammatory and peripheral, issues. This did not affect his bottom line, which was his “reluctantly reached” conclusion that, “on the evidence now available, the pursuit and sinking of the vessel appears not to have been authorized either by the terms of the Convention of January 1924 or by the rules of international law.”³⁰⁴

Massey’s April 9 memo, and the very detailed response by Secretary of State Stimson on April 17, 1929,³⁰⁵ bared the significant fault lines in the respective perceptions of each government regarding the principal facts and legal issues raised by the I’M ALONE’s sinking. Each side’s contentions, which were not significantly deviated from throughout the arbitration process, were as follows.

A. *Location*

As to location, the United States contended that the I’M ALONE’s position when she was sighted and commanded to heave to was not more than 10.8 miles from land, and this position was established “with certainty” due to the corroboration of the tanker, the HADNOT.³⁰⁶ In addition, Randell, by “fleeing and thus placing in jeopardy the safety of his ship and the lives of his crew, . . . admitted his own belief that his vessel was within Convention limits and thus subject to seizure.”³⁰⁷ The Canadians, on the other hand, citing to Randell’s experience and obvious self-interest in carefully monitoring the I’M ALONE’s location, given her activities, asserted that her position when she anchored was between 14.5 and 15 miles from the shore.³⁰⁸ Massey disputed the United States’

303. Memorandum by Henry L. Stimson, Sec’y of State, on Conversation with the Canadian Minister on the Subject of the “I’m Alone” Case (Apr. 9, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 5).

304. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 28.

305. Letter from Henry L. Stimson to Vincent Massey, *supra* note 224, at 32-43.

306. *Id.* at 34.

307. *Id.* at 35.

308. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 30. Massey states in a dispatch to the Canadian Secretary of State for Foreign Affairs that “Captain Randell is obviously a clever and experienced navigator with full knowledge of the precautions which he had to observe in order to carry on his trade without incurring the risk of seizure by the United States authorities.” As a result, he was “inclined to accept” Randell’s claim that he was fourteen and one-half or fourteen and three-quarters miles from shore, with a maximum speed of only six and three-quarters knots. Despatch from Vincent Massey, Canadian Minister, to William L. Mackenzie King, Sec’y of State for External Affairs (Mar. 27, 1929), *reprinted in* 4 DEP’T EXTERNAL AFFAIRS, *supra* note 33, at 498.

assertion that Randell's failure to heave to was evidence of guilt; according to him, consciousness of innocence would have made Randell reluctant to respond to an illegal order, especially in view of the "heavy loss" due to "long delays involved in the court proceedings" experienced by other vessels that had been seized and ultimately exonerated.³⁰⁹ Finally, the Canadians pointed to the case of the British steamer, the COAL HARBOR, in which a Coast Guard cutter commander, Suigard Johnson, was found to have faked his vessel logs to show that the steamer was in Convention waters when she was apprehended.³¹⁰ Such overzealousness, it was asserted, should call into question the I'M ALONE's starting position reported by the Coast Guard.³¹¹

B. Speed

The United States' principal argument as to I'M ALONE's speed was the product of bitter Coast Guard experience: in the words of Secretary Stimson, "[f]or a period of more than 4 years, [she] successfully eluded the patrol vessels of that Service chiefly because of [her] superior speed."³¹² Stimson went on to recount a litany of such failed pursuits: by the WOLCOTT off the coast of Louisiana in November 1928, during which the I'M ALONE attained an estimated speed of not less than twelve knots; by the ACUSHNET off the coast of Newport, Rhode Island, in July 1926, during which she achieved an estimated speed of no less than 14.1 knots; and by the OSSIPPEE in October 1926, during which the cutter's 13.5-knot speed barely allowed her to maintain station close astern of the schooner.³¹³ Canada, on the other hand, relied upon a deposition given by Randell to His Majesty's General Counsel in New Orleans in which he asserted that the bottom end cylinder bearing in the port engine was burned out during the pursuit, rendering her speed at "positively not more than 6 3/4 knots."³¹⁴

309. Letter from Vincent Massey to Henry L. Stimson, *supra* note 68, at 44.

310. Skoglund, *supra* note 1.

311. *Id.* The case against the COAL HARBOR was dismissed in U.S. court, and Johnson was "court-martialed and later sentenced for perjury." *Id.*

312. Letter from Henry L. Stimson to Vincent Massey, *supra* note 224, at 35.

313. *Id.*

314. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 28. This assertion was contradicted by a statement from Mate John Williams that they were doing seven and one-half knots at the beginning of the pursuit, and could not have done more than eight knots; and also by the chief engineer's estimate that with the engines in their then-current condition, the best they could have done was seven and one-half knots, a little better with sails and a fair breeze. *Id.* at 28-29.

C. *The Availability of Hot Pursuit*

The United States asserted that, although the Convention did not specifically address the issue, hot pursuit begun outside territorial waters but in Convention waters was surely an implied right, as without it “it would seem that the advantages purported to have been granted by the treaty are illusory, since it would always be open to offending vessels to refuse to stop when signaled, and flee to the high seas.”³¹⁵ The United States went on to cite three domestic court decisions in which British or Canadian vessels had been seized on the high seas by U.S. enforcement vessels after a pursuit begun in Convention waters.³¹⁶ In all three cases, the lawfulness of the pursuit and seizure had been upheld in U.S. court, and neither the British nor the Canadian government had protested.³¹⁷ While Stimson acknowledged that municipal decisions such as these could not establish international law, they were at least “entitled to respectful consideration.”³¹⁸ The bottom line, according to the United States, was that:

if the arrest would have been valid when the vessel was first hailed, but was made impossible through the illegal action of the pursued vessel in failing to stop when ordered to do so, then hot pursuit is justified and the locus of the arrest and the distance of the pursuit are immaterial, provided . . . that the pursuit has been hot and continuous.³¹⁹

The Canadians did not feel that either the U.S. court decisions, or her overall position regarding the availability of hot pursuit, were worthy of “respectful consideration.” Without conceding that the I'M ALONE was within one hour's steaming distance of the U.S. coast when pursuit began, the Canadians argued that the terms of the Convention should be “strictly observed,” and as the “definite and agreed procedure” set out in the Convention did not include a right of hot pursuit, such a right did not exist.³²⁰ In making this assertion, Massey reminded the United States of

315. Letter from Henry L. Stimson to Vincent Massey, *supra* note 224, at 39.

316. *Id.* at 37.

317. *Id.* The cases were: *Woitte v. United States*, 19 F.2d 506 (9th Cir. 1927); *Newton Bay*, 30 F.2d 444 (E.D.N.Y. 1928); *Vinces*, 20 F.2d 164 (E.D.S.C. 1927). Pursuit in the *Vinces* case was from seven and one-half miles to twelve and three-quarter miles from the U.S. coast. *Vinces*, 20 F.2d at 168.

318. Letter from Henry L. Stimson to Vincent Massey, *supra* note 224, at 38.

319. *Id.*

320. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 32. The Canadians cited to the Treaty of Helsingfors of August 19, 1925 as an example of an agreement in which such a right was explicitly provided. In that treaty, the Baltic States agreed to the mutual exercise of a right to search vessels within twelve miles of each signatory nation's shore. Article 9 of that treaty provided that “[i]f a vessel suspected of smuggling, which is found within [twelve miles from the coast], attempts to escape beyond the zone, the proper authorities of the country to

the Secretary of State's averment during the negotiation of the Convention: "It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt to seize a British vessel, save within the limits proposed"³²¹

Furthermore, Canada's government did not concur that such an extension needed to be implied so as to prevent the rights granted to the United States being rendered "illusory." In fact, statements by U.S. government officials to the effect that maritime smuggling had been "practically solved," with it being just one-eighth of what it used to be, proved quite the opposite.³²² The bottom line, then, was that because the I'M ALONE was not in Convention waters in the first place, and even if she was, the United States had no right under customary or Conventional law to pursue her, "the most essential elements of jurisdiction . . . appear to be lacking."³²³

D. Use of Force

The United States' position was that the "officers of the Coast Guard used the utmost discretion, and refrained from using force except as a last resort, and in firing on the I'M ALONE used the greatest precaution to avoid any loss of life."³²⁴ If Randell felt the U.S. law enforcement action was illegal, he should have surrendered under protest and sought appropriate redress in court or through diplomatic channels. Finally, as discussed earlier, the United States considered the Canadian fatal use of force against the American fishing vessel the SILOAM to be a "striking parallel" to, and precedent for, the force used in this case.³²⁵ The Canadians disagreed, contending that the pursuit and sinking of the I'M ALONE was authorized neither by the terms of the Convention nor

which the zone belongs may pursue the vessel even outside the zone on the high seas and may exercise the same rights in regard to the vessel as if it had been captured within the zone." Letter from Vincent Massey to Henry L. Stimson, *supra* note 68, at 46.

321. Note from the Charles E. Hughes, Sec'y of State, to H.G. Chilton, British Chargé d'Affaires (July 19, 1923), *reprinted in* 4 DEP'T OF STATE, *supra* note 19, app. F, at 95. For a later reference to this note by Massey, see Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 27.

322. Letter from Vincent Massey to Henry L. Stimson, *supra* note 68, at 46. To the Canadians, the United States' negotiation of a number of treaties with other countries that were "identical in form with the British treaty seems to show no great dissatisfaction with its terms." Letter from H.H. Wrong, Canadian Chargé d'Affaires, to William L. Mackenzie King, Sec'y of State for External Affairs (Sept. 18, 1929), *reprinted in* 4 DEP'T EXTERNAL AFFAIRS, *supra* note 33, at 533.

323. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 30.

324. Letter from Henry L. Stimson to Vincent Massey, *supra* note 224, at 40.

325. *Id.* at 41.

by the rules of customary international law.³²⁶ As to the terms of the Convention, His Majesty's Government in Canada would be loath to admit that the phrase 'the vessel may be seized and taken into a port of the United States' would warrant action so drastic as the destruction of a vessel; still less does authority appear to be conferred for the destruction of a vessel by shell-fire on the high seas, accompanied by loss of life, after a pursuit lasting for two days.³²⁷ In the Canadians' view:

If it was not possible to cripple the schooner without sinking her, or to board her in the weather prevailing, it is considered that it would have been possible to continue pursuit further without reaching the territorial waters of another state, during which time the weather might have cleared and boarding been effected.³²⁸

The DEXTER's firing was done "with the deliberate intention of sinking the vessel and not merely of rendering her helpless, as could have been done, for example, by crippling her rudder."³²⁹ All in all, with respect to the use of force, "[w]hen all the circumstances are taken into account, including the persistent rifle fire and the putting of the crew in irons, the impression that is formed is of a distinctly punitive intent."³³⁰

One issue not in dispute was the I'M ALONE's activities at the time of the sinking. Massey conceded up front that the I'M ALONE had "unquestionably been engaged for a number of years, under various owners, in endeavouring to smuggle liquor into the United States."³³¹ He could hardly do otherwise; as already discussed, Randell had been exceedingly voluble and explicit with the media regarding the schooner's,

326. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 28. The Canadians were also unimpressed by the SILOAM's precedential value, since pursuit in that case began from her territorial waters, where the right of pursuit was acknowledged by long-standing practice to exist. Since the underlying law enforcement action in the SILOAM case was lawful, in contrast to the United States' action in the I'M ALONE case, the derivative use of force in the former action was, in the view of the Canadians, on much firmer legal ground. *Id.*

327. *Id.* at 31.

328. Letter from Vincent Massey to Henry L. Stimson, *supra* note 68, at 46-47. Massey further informed Stimson, on this point, that the mate of the I'M ALONE had related in a deposition that Captain Paul of the WOLCOTT told him that "he advised the captain of the DEXTER to wait for smoother weather and he would have gone up alongside and tried to put men on board and avoid bloodshed." *Id.*

329. *Id.*

330. *Id.* at 47. This contention by Massey may have had its basis in a failed pursuit of the I'M ALONE by the DEXTER in late 1928. *See* text accompanying *supra* note 143. In that case, Randell outmaneuvered the DEXTER and escaped under cover of darkness. This exploit, according to Randell, caused mariners "up and down the coast of the Gulf of Mexico" to laugh at the skipper of the DEXTER, Captain Powell, who had a reputation for being "hard-boiled" and not one to take public humiliation lightly. RANDELL, *supra* note 27, at 282. He had heard through the rum runner grapevine that Powell had made him a special target. Ricci, *supra* note 2, at 16.

331. Letter from Vincent Massey to Henry L. Stimson, *supra* note 16, at 25.

and his, liquor smuggling activities.³³² He had also given a 4.5-page incriminating statement to Customs Supervisor, H.S. Creighton, while still in custody, and before being afforded consular access—which is undoubtedly the reason Massey included that as one of the five issues he brought up verbally in his face-to-face meeting with Stimson.³³³

Regarding those verbally raised issues, the U.S. government obviously took them seriously and the official response was provided by the Secretary of the Treasury, Andrew Mellon, himself.³³⁴ Responses to the consular access and confinement in shackles issues have already been discussed. As to concealing the death of Mainguy from Randell for an inordinate period, the U.S. position was that this was done because, by rule, information about prisoners was not shared with and amongst them because the duty of law enforcement officials was to turn prisoners over “in an uncompromised form to the appropriate prosecuting officer.”³³⁵ As to the alleged flag mutilation, Paul stated that after the 3-inch gun jammed, Randell held up the British flag, which he had taken down, and accused Paul of firing at it.³³⁶ Paul could see no damage to it, either then or when Randell hauled the flag back up.³³⁷ Regardless, any striking of the flag or of the halyard holding it was completely incidental to efforts to disable the I'M ALONE by damaging her rigging.³³⁸ Her rigging also played into the response to the final allegation, that the use of rifle fire was somehow improper. The U.S. response was that the rifle used, a Springfield Model 1903, had a muzzle velocity of 2700 feet per second, which meant that a bullet fired from it could easily pierce any of the sheets, halyards, or other running rigging of the I'M ALONE.³³⁹ Such targeted fire was, in the United States' view, much preferable to using 3-

332. See discussion *supra* notes 249-274.

333. Letter from Andrew Mellon to Henry L. Stimson, *supra* note 240. Randell had been informed before making his statement that his choice as to whether to answer questions was made “without any promise or threat of duress.” *Id.*

334. The hard line taken by Mellon in his responses was perceived by some as an effort to improve his stature among the dries and in fact, his standing in the Anti-Saloon League did rise. Skoglund, *supra* note 1.

335. *Id.* Boatswain Paul of the WOLCOTT gave a different explanation; according to him, he was advised by the mate and engineer of the I'M ALONE to refrain from passing on news of Mainguy's death to the DEXTER because Mainguy's cousin was onboard and would be violently affected at news of his death; and that, in fact, the cousin did say and do irrational things when he was finally permitted to see the body. Paul Testimony, *supra* note 186.

336. Paul Testimony, *supra* note 186.

337. *Id.*

338. See, e.g., *id.*

339. Letter from Andrew Mellon to Henry L. Stimson, *supra* note 240.

in. explosive shell, which could bring down a mast and endanger the lives of those on her deck.³⁴⁰

Thusly were the positions of the United States and Canada laid out. There were obviously significant differences in their respective understanding of the law and facts of the case. As the I'M ALONE matter involved a British vessel suffering “loss or injury through the [allegedly] improper or unreasonable exercise by the U.S. of the rights conferred by article II of the convention,” it fell within the purview of article IV of the Convention.³⁴¹ Once it became clear that the initial diplomatic sparring would not bring about a mutually satisfactory resolution, Massey informed Stimson that “His Majesty’s Government in Canada” took “much pleasure in accepting the proposal of the United States to submit the matter to arbitration” in accordance with article IV of the Convention.³⁴²

VII. THE COMMISSION AND ITS PROCESS

So arbitration was to be resorted to—but what were to be its parameters? Article IV was clear in one respect; each side was to appoint a commissioner.³⁴³ The United States nominated the Honorable William van Devanter, Associate Supreme Court Justice, as member of the tribunal, and George Wharton Pepper, Esq., former U.S. Senator, as American agent before the tribunal; Canada nominated Eugene Lafleur, Esq., K.C., LL.D., D.C.L., as member, and John E. Read, Esq., as agent.³⁴⁴ Commissioner Lafleur died before the commission began its work³⁴⁵ and Canada appointed the Right Honorable Lyman Poore Duff, P.C., Puisne Judge of the Supreme Court of Canada, in his place.³⁴⁶

Beyond requiring designation of a commissioner, article IV was entirely silent as to what the commissioners were to do and how they were to do it. The Americans made a bid to avoid further process

340. *Id.*

341. Liquor Convention of 1924, *supra* note 41, art. IV.

342. Letter from Vincent Massey to Henry L. Stimson, *supra* note 68, at 47-48. Stimson had closed his April 17 letter to Massey by stating that if the Canadian government “finds itself unable to concur in the findings of fact and the conclusions of law set forth herein,” the government of the United States would agree to arbitration. Letter from Henry L. Stimson to Vincent Massey, *supra* note 224, at 43.

343. *See supra* text accompanying note 62.

344. Editorial, *Arbitration of the “I’m Alone” Case*, 91 *ADVOC. PEACE THROUGH JUST.* 336, 337 (Nov. 1929). Mr. Read was Legal Advisor to the Canadian Department of External Affairs, and was formerly the Dean of the Law School of Dalhousie University, Halifax, Nova Scotia. *Id.*

345. Skoglund, *supra* note 1.

346. *See* discussion *infra* note 374.

altogether. In a letter dated March 5, 1930, to acting Secretary of State Cotton, Agent Pepper voiced his "considerable concern" with the case, feeling that "trial of its several issues will be of advantage neither to Canada nor to the United States."³⁴⁷ His concern centered around the fact that "the international questions are likely to be relegated to the realm of the purely academic and the case will become a mere exposé of an avowed conspiracy between Americans and Canadians to violate the laws of the United States."³⁴⁸ This result was likely to obtain, he opined, due to "eclipse of the legal questions in the case by the unpleasant and somewhat sensational circumstances surrounding the plot in which the vessel was engaged."³⁴⁹ As a result of all this, he proposed that an alternate means, "entirely consistent with the dignity of Canada," be found; and that, he suggested, would be a carefully drawn letter which Canada would accept in lieu of further proceedings.³⁵⁰

This proposal, conveyed by Cotton to Canadian Chargé d'Affairs, Massey, was rejected by the latter in a meeting between the two.³⁵¹ Massey reports that Cotton understood the Canadians' stance, and was "rather apologetic in referring to the line of argument taken by Mr. Pepper."³⁵² Massey reassured Cotton that Canada "was not unsympathetic in [its] attitude towards several of the points made by Mr. Pepper, in particular his feeling that it would be a matter of mutual interest to avoid publicity as far as might be possible."³⁵³ As a result, the Canadians proposed, and the United States agreed, that the arbitration should take the form of an informal investigation—later characterized as "a non-judicial investigation without publicity."³⁵⁴

The commissioners set out the process they would follow in the ponderously-titled "Memorandum Outlining the Course Which Should be Followed in Referring the Claim of the I'M ALONE to the Commissioners Under the Provisions of article IV of the Convention Signed at Washington the 23rd January, 1924," dated September 22,

347. Letter from George Pepper, U.S. Agent, to J.P. Cotton, Acting Sec'y of State (Mar. 5, 1930), *reprinted in* 4 DEP'T EXTERNAL AFFAIRS, *supra* note 33, at 522.

348. *Id.*

349. *Id.*

350. *Id.*

351. Letter from Vincent Massey, Canadian Minister, to O.D. Skelton, Under-Sec'y of State for External Affairs (Apr. 10, 1930), *reprinted in* 4 DEP'T EXTERNAL AFFAIRS, *supra* note 33, at 526-527.

352. *Id.* at 526.

353. *Id.*

354. *Id.*; Memorandum by Legal Advisor on Conference Held at Mr. Pepper's House (Apr. 30, 1930), *reprinted in* 4 DEP'T EXTERNAL AFFAIRS, *supra* note 33, at 527-28.

1930.³⁵⁵ Pursuant to the memo, the Canadian agent was to formulate a claim which was to contain the substance of each Canadian contention.³⁵⁶ The United States was to then submit an answer brief that addressed the Canadian contentions and set out the United States' position as to liability.³⁵⁷ After considering the claim and answer, the commissioners were to give further directions to each agent as to the direction the inquiry would take.³⁵⁸

The Canadian claim was submitted by agent Read on February 26, 1931, and in the main, reiterated the viewpoints expressed by Massey in his communications with Stimson.³⁵⁹ The principal contention of the "claimant Government" (Canada), in paragraph nine, was that the sinking of the I'M ALONE was not justified under the Convention or under general principles of international law.³⁶⁰ Such a conclusion was warranted because there was, in the circumstances, no right of hot pursuit either under the terms of the Convention or under general principles of international law; the I'M ALONE at all material times was never within one hour's sailing of the United States coast; and in any case, the sinking of the I'M ALONE was an excessive, improper, and unreasonable exercise of the rights, if any, which could be exercised under article II of the Convention.³⁶¹

The U.S. answer, submitted by Pepper on July 8, 1931, rejected the Canadian contentions, much in the same manner as Stimson's responses to Massey.³⁶² Significantly, however, the United States took the counteroffensive on the factual issue that was to prove pivotal in the case,

355. See Memorandum Outlining the Course Which Should be Followed in Referring the Claim of the *I'm Alone* to the Comm'rs Under the Provisions of Article IV of the Convention Signed at Washington the 23rd January, 1924, reprinted in 4 DEP'T OF STATE, *supra* note 19, app. B, at 51-52 [hereinafter Memorandum on Course for I'M ALONE Claim]. This memo "was approved by an exchange of notes; viz., Note No. 219, dated October 30, 1930, from the Canadian Chargé d'Affaires to the Secretary of State, and the answering note, dated November 14, 1930, from the Secretary of State to the Canadian Chargé d'Affaires." Directions from the Comm'rs Nominated by the High Contracting Parties Under the Provisions of the 4th Article of a Convention Concluded on 23rd January, 1924, Respecting the Regulation of the Liquor Traffic, reprinted in 4 DEP'T OF STATE, *supra* note 19, app. D, at 72 [hereinafter Directions from Comm'rs].

356. Memorandum on Course for the *I'm Alone* Claim, *supra* note 355.

357. *Id.*

358. *Id.*

359. Claim Made by His Majesty's Government in Canada in Respect of the British Ship *I'm Alone*, reprinted in 4 DEP'T OF STATE, *supra* note 19, app. C, at 53-57 [hereinafter Canada's Claim].

360. *Id.* ¶ 9.

361. *Id.* ¶¶ 10, 12-13.

362. Answer of the Gov't of the U.S. to the Claim of His Majesty's Gov't in Canada in Respect of the Ship *I'm Alone*, reprinted in 4 DEP'T OF STATE, *supra* note 19, app. C, at 58-66.

that of the I'M ALONE's ownership and operational control. While the United States admitted that at the time of her sinking the I'M ALONE was registered in the name of the Eugene Creaser Shipping Company, Limited, a company incorporated under the laws of the province of Nova Scotia, Pepper averred that the entire beneficial ownership of all the sixty-four shares of the capital stock of that company was, at the date of her sinking, vested in citizens of the United States.³⁶³ In fact, the United States contended—correctly, as it turned out—that the I'M ALONE had been built by an American for the express purpose of rum running, and had for essentially her entire career been owned and operated by citizens of the United States for that purpose.³⁶⁴ As a result, the United States did not believe she was entitled to be regarded as a British ship.³⁶⁵

Following submission and consideration of the claim and answer, the commissioners outlined the next step in the arbitral process in “directions” they issued on January 28, 1932.³⁶⁶ These directions required the “agents and counsel of the high contracting parties” to submit briefs as to three preliminary questions that were “essential to the consideration of the claim” so as to “facilitate the consideration” of the commissioners in the matter.³⁶⁷ The three questions were:

- Whether the Commissioners might enquire into the beneficial or ultimate ownership of the I'M ALONE or of the shares of the corporation that owned the ship; and if so, what the effect would be, if any, of indirect ownership and control by citizens of the United States on the claim.
- Whether the Government of the United States, under the convention of January 23, 1924, “has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination.” A second aspect of this question was whether the United States possessed a right of hot pursuit of a vessel when pursuit was commenced within the distance of twelve miles established by the revenue laws of the United States and was terminated beyond that distance.

363. The United States later amended these factual assertions as further information regarding her beneficial ownership was discovered. *Id.* at 58.

364. *Id.*

365. *Id.*

366. Directions from Commr's, *supra* note 355, at 72.

367. *Id.* at 73.

- Whether, in the circumstances, the Government of the United States was legally justified in sinking the I'M ALONE.³⁶⁸

These briefs were to be submitted within “the next few months,” and the agents were to arrange at their earliest opportunity after that for oral arguments regarding these questions.³⁶⁹

As is to be expected, each side filed a brief that argued in its favor as to all three of these questions, which the commissioners took under consideration.³⁷⁰ In the meantime, however, the U.S. Supreme Court issued a decision in the case of the seizure of the British vessel the MAZEL TOV that rendered the second part of question two moot.³⁷¹ In that case, it was settled that the legality of seizures of British vessels must be determined by the Convention, and that the Tariff Act of 1930 and its twelve-mile zone for the boarding of vessels for customs enforcement purposes was limited by the Convention so far as the search and seizure of British vessels was concerned.³⁷² In other words, the Convention and its jurisdictional provisions “occupied the field” when it came to British (and Canadian) vessels; the Tariff Act was in effect superseded by the Convention. The United States accordingly withdrew its argument that the Tariff Act, in addition to the Convention, provided a basis for the exercise of jurisdiction over the I'M ALONE; now all of the United States' jurisdictional eggs were in the Convention basket.³⁷³

On June 30, 1933, after having considered the briefs and oral arguments, the commissioners issued a joint preliminary report.³⁷⁴ In it, the commissioners announced that they had achieved a consensus as to two of the questions (questions 1 and 3).³⁷⁵ As to question 1, they concluded that they “may enquire into the beneficial or ultimate ownership of the I'M ALONE and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a

368. *Id.* at 73-74.

369. *Id.* at 74.

370. Fitzmaurice, *supra* note 268, at 98.

371. *Cook v. United States*, 288 U.S. 102, 121 (1933).

372. *Id.* This decision followed similar conclusions in lower courts. *See, e.g.*, *United States v. Sagatind*, 8 F.2d 288 (S.D.N.Y. 1925); *Sagatind*, 4 F.2d 928 (S.D.N.Y. 1925); *Pictonian*, 3 F.2d 145 (E.D.N.Y. 1924); *Frances Louise*, 1 F.2d 1004 (D. Mass. 1924); *see also* *Eagleton*, *supra* note 22, at 15.

373. S.S. “I’m Alone” (Can. v. U.S.), Joint Interim Report of the Commissioners, 3 R.I.A.A. 1609, 1613-15 (1935).

374. *Id.* at 1613.

375. *Id.*

basis for considering the recommendations which they shall make.”³⁷⁶ But the commissioners reserved “the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented” for further consideration.³⁷⁷

As to question 2, whether hot pursuit could be exercised from Convention waters, the commissioners announced that they “are as yet not in agreement as to the proper answer, nor have they reached a final disagreement on the matter.”³⁷⁸

As to the third question, the commissioners’ examination assumed that the U.S. Government had the right of hot pursuit in the circumstances, and that the factual circumstances involved in the pursuit and sinking were as the United States related them to be.³⁷⁹ Applying such assumptions, the commissioners concluded that the United States would have been justified, consistently with the Convention, in using necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing, and bringing into port the suspected vessel.³⁸⁰ Further, if sinking would have occurred incidentally to the use of such necessary and reasonable force for such a purpose, the pursuing vessel might be entirely blameless.³⁸¹ But the commissioners concluded that, in the circumstances, the admittedly intentional sinking of the suspect vessel was not justified by anything in the Convention.³⁸²

Accordingly, the commissioners made recommendations to the two Governments: First, that the agents be instructed by their respective Governments to prepare and submit to the commissioners separate statements of their respective positions on the issue of the ultimate beneficial interests in the vessel and in the cargo, along with documents and witnesses to be relied upon to substantiate their respective contentions.³⁸³ Second, that the agents be similarly instructed to submit to the commissioners either a joint statement or separate statements (in either case, specifically itemized) of the sums which should be payable

376. *Id.* at 1614.

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.* at 1615.

381. *Id.*

382. *Id.*

383. *Id.* In contrast to the usual practice in arbitral proceedings, the tribunal permitted the testimony of actual witnesses instead of simply relying on sworn statements. The tribunal was also authorized to subpoena witnesses and prescribe penalties for false testimony. Four hearings, at which documentary and testimonial evidence were presented, were held between December 28, 1934 and January 2, 1935. *S.S. “I’m Alone”*; Joint Final Report of the Commissioners, 3. R.I.A.A. at 1617.

by the United States in case the commissioners finally determined that compensation was payable by that Government.³⁸⁴

VIII. BENEFICIAL OWNERSHIP AND THE COMMISSION'S FINAL DECISION

The agents complied with the direction of the commissioners, and on June 30, 1933, each submitted a statement regarding the issues of beneficial ownership and the sum which should be payable by the United States.³⁸⁵ As to compensation, the Canadians believed a sum of \$386,803.18 was warranted.³⁸⁶ Twelve particular items made up their claim, three related to the shipping company that operated the I'M ALONE and nine to her crew.³⁸⁷ For the shipping company, the Canadians requested \$268,386.68 to cover such things as the value of her cargo (\$125,457), hull and rigging (\$25,000), her engine and machinery (\$21,000), legal expenses, and the like.³⁸⁸ For her crew, the Canadians requested compensation for lost wages and for an itemized list of personal items that went down with the vessel.³⁸⁹ Interestingly, one of the witnesses the Canadians called to testify live before the commissioners was Captain Randell himself, who informed them that, in June 1929, he came down with "stubborn shingles" that his doctor attributed to "the heavy physical strain and mental worry under which [he had] suffered from the sinking of the I'M ALONE."³⁹⁰ According to him, he was ill all summer, and the cost of treatment was \$1000.³⁹¹ One can only imagine the joy American agent Pepper experienced in cross-examining Randell under oath; either way, recompense for this claimed malady was not part of the commissioners' final award.

The United States, in its statement, claimed to be unable to fully comply with the commissioners' directions, as there was not enough

384. *S.S. "I'm Alone"*, Joint Interim Report of the Commissioners, 3 R.I.A.A. at 1615.

385. Statement with Regard to the Claims for Compensation Submitted by the Canadian Agent Pursuant to Directions Given by the Comm'rs (June 30, 1933), *reprinted in* 6 DEP'T OF STATE, ARBITRATION SERIES NO. 2, at 31 (1935); Statements Submitted by the Agent for the United States Pursuant to the Directions Given by the Comm'rs (June 30, 1933), *reprinted in* 6 DEP'T OF STATE, *supra* note 385, at 91.

386. Statement with Regard to the Claims for Compensation Submitted by the Canadian Agent Pursuant to Directions Given by the Comm'rs *supra* note 385, at 35.

387. *Id.* at 34-35.

388. *Id.*

389. *Id.*

390. 4 HEARING ON CLAIMS OF THE BRITISH SHIP I'M ALONE 434 (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 135).

391. *Id.*

information on such things as the value of furniture, stores, and the like aboard the vessel to permit proposal of a final figure for monetary compensation.³⁹² As to the I'M ALONE herself, the United States opined that her value was not in excess of \$20,000, and in support of this figure submitted a number of affidavits from prior owners (one of whom sold the vessel for \$10,000, the other who bought her for \$18,000) and from marine surveyors, who variously opined as to her value being \$20,000, \$20,505, and \$10,000.³⁹³

The United States was able to provide purchase and sale information from various owners of the I'M ALONE because much effort had been expended to investigate the issue of the beneficial ownership of the vessel, an issue of particular and long-standing interest to the United States. As early as February 1927, the U.S. State Department had directed American Consul General Willson in Yarmouth, Nova Scotia, to forward to the department a "report concerning the registered owner or owners of [the I'M ALONE], together with information concerning the persons who actually own and control its operations."³⁹⁴ U.S. diplomatic representatives in London and Canada, relying on cooperation from authorities of the respective governments, provided periodic I'M ALONE ownership updates to the State Department between 1927 and her sinking in 1929.³⁹⁵ By the time of the arbitration, Britain had provided the United States with a certified copy of the official British registry relating to the I'M ALONE, which the United States had provided to the commissioners.³⁹⁶ The registry established the following record ownership of the vessel:

1. The I'M ALONE Shipping Co., from October 31, 1924
2. Christian Iverson, from April 28, 1928
3. The Eugene Creaser Shipping Co. Ltd., from June 26, 1928
4. Eastern Seaboard Steamship Agencies Ltd., from September 28, 1928; and

392. Statements Submitted by the Agent for the United States Pursuant to the Directions Given by the Comm'rs *supra* note 385, at 91.

393. *Id.*

394. Letter from Joseph Grew to William H. Robertson, *supra* note 98.

395. *See supra* text accompanying note 36.

396. Certificate of Registration of *I'm Alone*, in Statement with Regard to the Question of Ultimate Beneficial Ownership Submitted by the Canadian Agent Pursuant to Directions Given by the Comm'rs, *reprinted in* 6 DEP'T OF STATE, *supra* note 385, at app. A-7, at 26 [hereinafter Canadian Statement in Regard to Ultimate Beneficial Ownership].

5. The Eugene Creaser Shipping Company, again, from November 29, 1928.³⁹⁷

Official corporate registry was one thing; beneficial ownership (i.e., who actually controlled, and profited from, the vessel's activities) was quite another. The United States caught an extraordinarily lucky break in untangling the I'M ALONE's beneficial ownership web through a seemingly unrelated Prohibition prosecution in Louisiana. It all began Saturday morning, June 22, 1929, when a stranger, subsequently determined to be Clarence Arbaugh of Lake Arthur, Louisiana, arrived at the Southern Pacific Railroad Depot in the west end of Gueydan, Louisiana, and identified himself to the depot manager, John Oliver Beaxis, as R.L. Kellogg.³⁹⁸ "Kellogg" asked Beaxis to immediately ship out a certain boxcar of "clean rice screenings" consigned to the B.S. Solomon Company of Harrison, New Jersey, that was sitting on a siding at the depot.³⁹⁹ Beaxis, "maybe the most honest man in Louisiana in 1929,"⁴⁰⁰ refused to do so, as the cargo was not under seal, and could not be placed under seal until it was inspected.⁴⁰¹ No amount of pleading, or even an offered bribe, could entice him otherwise. In fact, the urgency of "Kellogg's" pleadings raised Beaxis' suspicions, and he contacted federal officials, who responded to the scene and discovered the boxcar to be filled with liquor.⁴⁰²

In the course of investigating this case, federal officials deciphered a series of coded telegrams that linked the Gueydan case to the I'M ALONE, and ultimately unlocked the secrets of her beneficial ownership and control.⁴⁰³ The code breaking was done by Elizabeth Friedman of the Bureau of Prohibition Enforcement, who was loaned to the Coast Guard specifically to crack the radio codes of the rum runners.⁴⁰⁴ These

397. *Id.* apps. A-2 to -5, A-7 at 17-23, 26.

398. Bagwell, *supra* note 146, at 12.

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. Hundreds of encrypted messages between the "black" ships and their shore stations had been intercepted by the Coast Guard Intelligence Office in Mobile, Alabama, and many more were seized by the special agents when they raided a liquor syndicate headquarters in New Orleans. David Mowry, *Listening to the Rum Runners: Radio Intelligence During Prohibition*, NAT'L SEC. AGENCY CTR. FOR CRYPTOLOGIC HIST. 26 (2014), https://www.nsa.gov/about/_files/cryptoilogic_heritage/publications/prewii/rumrunners.pdf. Technology was not the sole province of the government; rum runners used radio detection finding gear to locate Coast Guard cutters, and set up numerous clandestine radio stations to further their operations. CANNEY, *supra* note 3, at 8.

404. Ricci, *supra* note 2, at 5.

telegrams, sent from Belize, through New Orleans, and on to New York, contained code words such as YINO, YICKY, YEDER, YIDEG, and YIDAF, which Friedman was able to determine corresponded to various types and brands of liquor—for example, “YICKY, YEDEB, AKBUZ” were code words for “ALCOHOL, BOURBON, MALT.”⁴⁰⁵ Not only that the quantities of each brand of liquor ordered on one particular telegram were determined to correspond exactly with the quantities of each brand of liquor declared by Randell on customs forms when the I’M ALONE departed from Belize on her final voyage.⁴⁰⁶ Most importantly, the telegrams yielded a name, Dan Hogan,⁴⁰⁷ who, together with associates, maintained accounts with Western Union in New York registered under the cable addresses of HALFORAN, MOCANA, and GAZAMO.⁴⁰⁸ These account names were linked to the incriminating telegrams intercepted from Belize, thus implicating Hogan and his associates not only in liquor smuggling generally, but with the I’M ALONE’s rum running in particular.⁴⁰⁹

Further federal investigation into the activities of Hogan and his associates led them to two unseemly characters, Marvin J. Clark, known as the “czar” of smuggling,⁴¹⁰ and John Magnus, a renowned northeastern bootlegger,⁴¹¹ both of whom were U.S. citizens. Both men executed affidavits in return for sentencing concessions after being convicted for bootlegging and related offenses.⁴¹² These affidavits exposed the sordid history of the I’M ALONE and, together with corroborating evidence

405. Skoglund, *supra* note 1.

406. *Id.*; *see also* Statements Submitted by the Agent for the United States, *supra* note 392, at 84-85.

407. Hogan’s real name was Dan Halpin; he also went by the alias New York Johnnie. *See* Documents and Photographs Relating to the *I’m Alone* Case (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 137).

408. Statements Submitted by the Agent for the United States, *supra* note 392, at 84-85.

409. *Id.* Hogan was convicted for his involvement in the Gueydan affair, for which he was sentenced to four years in federal prison in Atlanta. He was later convicted in federal court in Opelousas, Louisiana, for the I’M ALONE’s rum running activities while he was part owner. Ricci, *supra* note 2, at 32. However, no further sentence was imposed on him because of double jeopardy considerations. He was released from jail in January 1936. *Id.* at 32 n.90.

410. Skoglund, *supra* note 1. Clark’s aliases were M. J. Clarkson, M.J. Williams, Jim Clarkson, Jim Johnson, Jim Williams, and Big Jim. *See* Documents and Photographs Relating to the *I’m Alone* Case, *supra* note 407.

411. Bagwell, *supra* note 146, at 7.

412. Clark’s conviction was delayed because he skipped bail and headed to Canada, ostensibly to get married. Operating under an alias in the United States in December 1931, he was arrested on a minor charge and recognized as an absconded Gueydan conspirator. He pleaded guilty to the Gueydan offenses on March 19, 1932, and executed his affidavit on April 4, 1932, which was submitted as Appendix 4 to the U.S. brief regarding the I’M ALONE’s beneficial ownership. *Id.* at 12; Skoglund, *supra* note 1.

provided by agent Pepper, conclusively demonstrated to the commissioners that, as the United States contended:

[T]he beneficial or ultimate ownership of the I'M ALONE and of the shares of the corporation owning the ship was at all times, subsequent to September 28, 1928, down to the date of the sinking of the vessel, March 22, 1929, in citizens of the United States, and that Canadian registry was resorted to for the purposes of gaining for the vessels the protection of the British flag in the course of her rum-running operations.⁴¹³

Magnus' affidavit established that he, using the alias John Rogers, commissioned the building of the I'M ALONE in Canada in or about January 1923, for the express purpose of smuggling liquor to the United States in violation of the Prohibition laws.⁴¹⁴ He organized a Canadian company, the I'M ALONE Shipping Co., with dummy stockholders as her nominal owner.⁴¹⁵ Later, at the advice of counsel, who informed him that Canadian customs authorities were investigating the vessel, he formed a holding company, Eastern Seaboard Steamship Agencies Ltd. (ESSA).⁴¹⁶ This company was again owned solely by him with dummy Canadian stockholders to conform to Canadian law.⁴¹⁷ He met and hired one George Hearn, a Canadian, who attended to the corporation and other business of the ESSA.⁴¹⁸ Magnus sold the I'M ALONE to Christian Iverson on March 16, 1928, and as a result, dissolved both ESSA and the I'M ALONE Shipping Co.⁴¹⁹

Clark's affidavit picked up the story in October, 1928, when one Frank H. Reitman and Hogan visited him in New York and proposed to him the purchase of the I'M ALONE for use as a rum runner.⁴²⁰ They decided Clark would go up to Nova Scotia to inspect her, as he had experience in building and handling boats, and if she proved satisfactory, he would purchase her.⁴²¹ Reitman provided him \$10,000 toward the

413. Statements Submitted by the Agent for the United States, *supra* note 393, at 81.

414. Affidavit of John B. Magnus (Apr. 20, 1934), *in* Statements Submitted by the Agent for the United States, *supra* note 392, app. 6, at 34.

415. *Id.*

416. *Id.* at 114. According to Magnus, the company was organized by Mr. Jacobs, K. C., a member of Parliament. *Id.*

417. *Id.* at 114-15.

418. *Id.*

419. *Id.* at 115. Magnus claimed that he made a total of \$3 million from the I'M ALONE's operations from 1923 through 1928. Bagwell, *supra* note 146, at 7.

420. Affidavit of Marvin J. Clark (Apr. 4, 1932), *reprinted in* Statements Submitted by the Agent for the United States Pursuant to the Directions Given by the Comm'rs, *supra* note 392, app. 4, at 103 [hereinafter Clark Affidavit].

421. Clark Affidavit, *supra* note 420, at 103-04.

purchase price, Hogan \$5000, and Clark chipped in \$5000 himself.⁴²² He took a boat from Boston to Yarmouth, where he was met at the dock by George Hearn, to whom he had been referred by Hogan—the same George Hearn who had been the titular “owner” of the I’M ALONE when Magnus was her owner.⁴²³ Hearn took Clark to the boatyard owned by Iverson, where the I’M ALONE was being refurbished.⁴²⁴ After inspecting her and determining her to be satisfactory for her intended usage, he bought her for \$18,000.⁴²⁵ To “cloak” her true U.S. ownership, he put title in Hearn’s name.⁴²⁶

Following these transactions, Clark had only sporadic interactions with the schooner, and did not take an active part in her direction and control.⁴²⁷ This did not mean that he was not involved in the I’M ALONE’s criminal enterprise; his role was not to operate her, but to pilot the “mosquito” boats that offloaded her illicit cargo on her voyages from Belize to the Louisiana coast.⁴²⁸ This he did, to the tune of several thousand cases of liquor, on her voyages during December 1928 and January and February of 1929.⁴²⁹ On those occasions, he either piloted or directed the operations of the boats *CHERIE*, *CITY OF ROME*, *LAURA LEE*, *VENUS*, and *NICHOLAS*; he was forced to run the *CHERIE* aground on the shores of Marsh Island and set her on fire after being chased by CG Cutter 231.⁴³⁰

422. *Id.*

423. *Id.* at 106. Clark’s story was corroborated by a passenger list from the steamer. *See* Certified Copy of Passenger Records of the Boston & Yarmouth Steamship Co., Ltd. *in* Statements Submitted by the Agent for the United States, *supra* note 392, app. 5, at 112a.

424. Clark states that he had known Iverson “for a good many years” and had outfitted with him on previous occasions. Clark Affidavit, *supra* note 420, at 107. Iverson had hauled her out, completely overhauled her, and made extensive repairs to the engine at the Lunenburg foundry. *Id.*

425. *Id.* at 108. Hearn received \$500 as the facilitator of the deal. *Id.* at 108; *see also* Hackett, *supra* note 262, at 47.

426. Clark Affidavit, *supra* note 420, at 109.

427. *Id.* at 110. He did claim that he suggested to Hearn that he retain a captain who was well able to represent himself in case of any difficulty “as the Coast Guard were pulling in vessels right and left at this time.” He advised Randell after he’d been hired that he should let the Coast Guard sink her rather than let them put a line on her. *Id.*

428. Skoglund, *supra* note 1.

429. *Id.*

430. Clark Affidavit, *supra* note 420, at 111. Interestingly enough, the *CHERIE* affair provided an independent link between Hogan and the I’M ALONE. Incongruous as it may seem, one of the *CHERIE*’s crew, Stirling Bemis, dropped his suitcase while fleeing. In it was a library book, checked out in his name, which allowed federal officials to trace him. Proving the adage that there’s no honor amongst thieves—or bootleggers—this bibliophile identified Hogan as having been aboard the *CHERIE* at the time of her grounding. Bagwell, *supra* note 146, at 13; Skoglund, *supra* note 1.

This compelling evidence presented by the Americans as to the beneficial ownership of the I'M ALONE left Canadian agent Read with the thankless task of mounting an effective rebuttal. His first contention was a renewal of his argument that the question of ownership was not a suitable topic for consideration by the commissioners.⁴³¹ In Canada's view, as the I'M ALONE was registered in Canada, she was *de jure* a British vessel of Canadian registry; no behind-the-scenes examination of the *de facto* ownership was necessary.⁴³² Even if such an examination was conducted, anything it turned up would not change the fact that she was flagged by Canada, and thus Canadian as a matter of law. The problem with this argument is that while it was probably correct as a matter of law, the commissioners had already signaled, by their decision to consider the question of beneficial ownership, that they were inclined to consider equitable principles, as well as strict principles of law, in deciding on the recommendations to make to the contending governments.⁴³³

The Canadians responded to the American argument that Canada was bringing this action against America on behalf of Americans (the real owners of the schooner) by citing to the Merchant Shipping Act of 1894, which limited ownership of Canadian vessels to British citizens.⁴³⁴ In other words, by law, no U.S. citizens could obtain a proprietary interest in the I'M ALONE. If they did so in violation of the law—as the facts certainly indicated had occurred with the I'M ALONE—the remedy would be forfeiture of the vessel to the Crown. Thus, Canada would remain the real party in interest, thereby obviating the United States' contention on that score.⁴³⁵

Finally, Canada reluctantly turned to principles of equity, including the issue of beneficial ownership.⁴³⁶ As to that issue, Canada offered an affidavit by and the testimony of Hearn to the effect that he was the *de facto* owner, possessing sixty of sixty-four shares of the Eugene Creaser Shipping Company (the other four being held by Canadians, one of whom was Iverson), and that he actively participated in her operations,

431. Canadian Statement in Regard to Ultimate Beneficial Ownership, *supra* note 396, at 9.

432. Fitzmaurice, *supra* note 268, at 87.

433. *Id.*

434. *Id.* at 90.

435. Canadian Statement in Regard to Ultimate Beneficial Ownership, *supra* note 431, at 14.

436. *Id.* at 11-12.

including purchasing the cargo that was aboard her when she was sunk.⁴³⁷ This was so patently false that it was not vigorously defended even by agent Read, whose case was further weakened by the fact that all of the Creaser company documents, including the list of supposed shareholders, had mysteriously disappeared.⁴³⁸ Pepper, however, “seized upon Hearn’s testimony . . . as proof that, if it were believable, it would incriminate him for smuggling”; by pressing for damages, Canada would be rewarding a Canadian criminal at best, and American bootleggers at worst.⁴³⁹ In response to this, Read was relegated to unconvincing platitudes such as “[g]ood men and bad men, good ships and bad ships, alike are entitled to the protection of the law and to redress when they are unlawfully injured,”⁴⁴⁰ and that if morality or merit was a relevant consideration, it would serve to “exclude by far the largest class of claim likely to arise” pursuant to article IV of the Convention.⁴⁴¹ This was perhaps true as a matter of law, but was not particularly useful before a tribunal considering principles of equity as well as the law.

Having weighed all the evidence and arguments, the commissioners issued their joint final report on January 5, 1935.⁴⁴² This report is noteworthy not only for what it said, but what it did not say. Entirely absent from the report was any discussion, or even mention, of hot pursuit and its ancillary issues (the distance of I’M ALONE from shore when pursuit began, the speed she was capable of making, and the like) to which so much effort and attention had been directed. Also missing was any analysis or explanation as to why the commissioners reached the particular conclusions they announced in their report.

The first conclusion they reached addressed the lawfulness of the force used by the United States. The commissioners stated that, “By their interim report the Commissioners found that the sinking of the

437. *Id.*; Affidavit of George J. Hearn (May 23, 1934), in 6 DEP’T OF STATE, *supra* note 385, at 27 [hereinafter Hearn Affidavit].

438. Skoglund, *supra* note 1. The American Consul in Halifax reported that all Eugene Creaser books and papers had been forwarded from the office of the Registrar of Shipping in Lunenburg to Ottawa; and further, that all papers, documents, and books held by the company had been forwarded to the company’s lawyers, who in turn related they had been forwarded to Ottawa. They were never found. Letter from T. Jaeckel, Am. Consul Gen., Halifax, to Henry L. Stimson, Sec’y of State (Apr. 8, 1929) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 120, Folder 5).

439. Skoglund, *supra* note 1.

440. Canadian Statement in Regard to Ultimate Beneficial Ownership, *supra* note 431, at 10-11.

441. Fitzmaurice, *supra* note 268, at 102.

442. S.S. “I’m Alone” (Can. v. U.S.), Joint Final Report of the Commissioners, 3 R.I.A.A. 1609, 1616 (1935).

vessel was not justified by anything in the Convention. The Commissioners now add that it could not be justified by any principle of international law.”⁴⁴³ Because the sinking of the vessel was “an unlawful act,” the commissioners considered that “the United States ought formally to acknowledge its illegality, and to apologize to His Majesty’s Canadian Government therefor; and, further, that as a material amend in respect of the wrong the United States should pay the sum of \$25,000 to His Majesty’s Canadian Government; and they recommend accordingly.”⁴⁴⁴

The other principal conclusion reached by the commissioners was the finding

as a fact that, from September, 1928, down to the date when she was sunk, the I’M ALONE, although a British ship of Canadian registry, was *de facto* owned, controlled, and at the critical times, managed, and her movements directed and her cargo dealt with and disposed of, by a group of persons acting in concert who were entirely, or nearly so, citizens of the United States, and who employed her for the purpose mentioned.⁴⁴⁵

As a consequence, the commissioners opined that “no compensation ought to be paid in respect of the loss of the ship or the cargo.”⁴⁴⁶

The same did not apply to the crew, none of whom, according to the commissioners, was a “party to the illegal conspiracy to smuggle liquor into the United States and sell the same there.”⁴⁴⁷ As a result, the commissioners recommended that compensation in the following amounts should be paid by the United States to His Majesty’s Canadian Government for the benefit of the captain and members of the crew:

For the captain, John Thomas Randell, the sum of \$7,906.00
For John Williams, deceased, to be paid to his proper representatives,
\$1,250.50
For Jens Jansen, \$1,098.00
For James Barrett, \$1,032.00

443. *Id.* at 1617.

444. *Id.* at 1618.

445. *Id.* at 1617-18.

446. *Id.* at 1618.

447. *Id.* This seemingly incongruous conclusion appears to be based on the fact that the charges against them had been dropped. It ignores the repeated, and detailed, averments of Randell as to the I’M ALONE’s activities, and also the commissioners’ own conclusion that in December 1928, and during the early months of 1929, down to the date of the sinking of the I’M ALONE, “she was engaged in carrying liquor from Belize, in British Honduras, to an agreed point or points in the Gulf of Mexico, in convenient proximity to the coast of Louisiana, where the liquor was taken from her in smaller craft, smuggled into the United States and sold there.” *Id.* at 1617.

For William Wordsworth, deceased, to be paid to his proper representatives,
\$907.00

For Eddy Young, \$999.50

For Chesley Hobbs, \$1,323.50

For Edward Fouchard, \$965.00

For Amanda Mainguy, as compensation in respect of the death of Leon Mainguy, for the benefit of herself and the children of Leon Mainguy (Henriette Mainguy, Jeanne Mainguy and John Mainguy) the sum of \$10,185.00.⁴⁴⁸

The United States complied with the commissioners' recommendations, issuing a brief acknowledgement that His Majesty's Government and Canada had been wronged by the I'M ALONE's sinking, and an apology therefore, appropriating \$50,666.50 as full settlement of any monetary obligation incident to that wrong.⁴⁴⁹

IX. THE REST OF THE STORY AND CONCLUSION

And so ended the I'M ALONE affair, almost six years after the sinking that began it. With one qualification, it is difficult to improve upon this epitaph for the maritime saga that was the I'M ALONE case:

Despite the prodigious amount of human energy expended on the I'M ALONE case, neither party gained significantly from it. Canada had been exposed as an unsuspecting shield for American criminals. The coastal law enforcement officers of the United States, on the other hand, had been revealed as trigger-happy and even vengeful. The body of international law did not profit appreciably. The right of hot pursuit—the thorniest but most interesting problem—was not resolved, but temporarily assumed to have existed in order that the tribunal could move on to the question of the sinking. Ironically, in the six years required to thrash out this case, the Prohibition Amendment, without which there probably would have been no such case, was repealed and the liquor enforcement treaties rendered dead letters. Most significantly, perhaps, the I'M ALONE arbitration represented one more landmark in the friendly relations enjoyed by the United States and Canada, which for over one hundred years has enabled them to work out their differences at the conference table rather than on the battlefield.⁴⁵⁰

448. *Id.* at 1618.

449. U.S. Acknowledgement of Payment of I'M ALONE Settlement (Jan. 1936) (on file with the University of Rochester Rare Books Special Collections and Preservation Department, William Roy Vallance Papers 1908-1967, Box 134, Folder 5).

450. Skoglund, *supra* note 1. Nancy Skoglund worked in the Department of Rare Books and Special Collections at the University of Rochester, where the Vallance papers are housed.

The qualification to this statement is that the I'M ALONE case has modern day legal relevance in one important area, that relating to the level of force that may be used in furtherance of a maritime law enforcement operation. This was the first of only three “formal” international tribunals that have considered that issue, and the commissioners’ endorsement of the “necessary and reasonable force” standard has survived, with only nonsubstantive vernacular modifications, into the modern era.⁴⁵¹ For example, the International Tribunal for the Law of the Sea in the *M/V Saiga* case expressed the limitation on force for maritime law enforcement purposes as “[r]easonably required in the circumstances.”⁴⁵² The standard in the Coast Guard’s use of force policy is that only that force “reasonably necessary under the circumstances” may be used, while that in the Department of Defense’s Standing Rules for the Use of Force is “minimum necessary” under the circumstances.⁴⁵³ Thus, it can be confidently stated that the standard enunciated in I'M ALONE has well withstood the passage of time, and provides an impressive, enduring pedigree to that principle of law.

The other legal issues presented in the case have essentially been settled through the near-universal adoption of the United Nations Convention on the Law of the Seas of 1982 (UNCLOS). The maximum breadth of territorial waters, in which a coastal state is sovereign, has been extended from three to twelve nautical miles from shore, and the rights exercisable by the coastal State in its territorial waters are defined in Part 2 of UNCLOS. A “contiguous zone” has been created that extends from the outer edge of territorial waters to a distance of up to twenty-four nautical miles from shore, in which a coastal state may exercise the jurisdiction necessary to prevent or punish violations of its fiscal, immigration, sanitary, or customs laws.⁴⁵⁴ Such a zone, had it existed during Prohibition, would have permitted the United States to take enforcement action against foreign vessels “hovering” outside its territorial waters with the intent of smuggling liquor into the country in violation of its customs laws. The doctrine of hot pursuit is explicitly

451. The other two cases are: *M/V Saiga* (No. 2) (St. Vincent v. Guinea), Case No. 2, Judgment of Dec. 4, 1997, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_1/judgment_041297_eng.pdf; *Red Crusader* (Den. V. U.K.), Commission of Inquiry, 1962 I.C.J. Rep. 485 (Mar. 23).

452. *M/V Saiga*, Case No. 2.

453. See U.S. COAST GUARD, MARITIME LAW ENFORCEMENT MANUAL, COMMANDANT INSTRUCTION M16247.1F (series), ch. 4 (2013); CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01B, THE STANDING RULES OF ENGAGEMENT AND STANDING RULES FOR THE USE OF FORCE, enclosure L (2005).

454. UNCLOS, *supra* note 23, art. 33.

recognized, exercisable (as long as technical requirements such as valid initiation, continuous and uninterrupted pursuit, etc., are satisfied) in all maritime zones except the territorial waters of another state (and even there, with permission of that state).⁴⁵⁵ The rules as to granting statehood to a vessel remain essentially unchanged, with the only requirement being that there exists a “genuine link” between the vessel and the state granting the vessel the right to fly its flag.⁴⁵⁶

Time took its inevitable toll on the *dramatis personae* of this maritime saga. Two of the I'M ALONE's crew were dead by the time the arbitral process ended.⁴⁵⁷ So was Big Jim Clark, whose affidavit proved so pivotal to the United States' case; he was shot and killed while out on bail on July 6, 1932.⁴⁵⁸ Randell briefly served in the Royal Navy during World War II, but succumbed to illness in Canada in 1944.⁴⁵⁹ Sunken bottles of the I'M ALONE's cargo are believed to have washed ashore on the Louisiana coast in 1931.⁴⁶⁰ The incident became the topic of a popular Canadian folk song written by Wade Hemsworth, which describes the protagonists with lines such as “she went down under fire of a Yankee cutter outside of treaty waters” and refers to Randell as “a good Samaritan to thirsty Americans.”⁴⁶¹ Perhaps inevitably, in view of the pugnacious nature of her former commander, the DEXTER long survived all other participants in this maritime drama. After being decommissioned in 1936, she was renamed the BUCCANEER and used for dinner cruises on Lake Michigan, with her stern ironically inscribed with “1-800-PARTY BOAT.”⁴⁶² She was scuttled in summer 2010, joining her quarry of long ago, the I'M ALONE, as a maritime habitat at the bottom of the sea.

455. *Id.* art. 111.

456. That this link is not particularly difficult to establish is illustrated by the modern practice of open registries (flags of convenience) granting “Statehood” to vessels regardless of the nationality of their owners, crews, etc.

457. Hackett, *supra* note 262, at 50.

458. Bagwell, *supra* note 146, at 13-14.

459. Ricci, *supra* note 2, at 37.

460. *Id.* at 34.

461. *Id.* at 37.

462. *Id.*