land and naval forces; and (3) that the tribunal trying them had not been constituted in accordance with the requirements of the Articles of War.

The first argument the Court met as follows: The act of Congress in providing for the trial before military tribunals of offenses against the law of war is sufficiently definite, although Congress has not undertaken to codify or mark the precise boundaries of the law of war, or to enumerate or define by statute all the acts which that law condemns. ". . . [T]hose who during time of war pass surreptitiously from enemy territory into . . . [that of the United States], discarding their uniforms upon entry, for the commission of hostile acts involving destruction of life or property, have the status of unlawful combatants punishable as such by military commission." [219] The second argument it disposed of by showing that petitioners' case was of a kind that was never deemed to be within the terms of the Fifth and Sixth Amendments, citing in confirmation of this position the trial of Major Andre.[220] The third contention the Court overruled by declining to draw the line between the powers of Congress and the President in the premises,[221] thereby, in effect, attributing to the President the right to amend the Articles of War in a case of the kind before the Court *ad libitum*.

The decision might well have rested on the ground that the Constitution is without restrictive force in wartime in a situation of this sort. The saboteurs were invaders; their penetration of the boundary of the country, projected from units of a hostile fleet, was essentially a military operation, their capture was a continuation of that operation. Punishment of the saboteurs was therefore within the President's purely martial powers as Commander in Chief. Moreover, seven of the petitioners were enemy aliens, and so, strictly speaking, without constitutional status. Even had they been civilians properly domiciled in the United States at the outbreak of the war, they would have been subject under the statutes to restraint and other disciplinary action by the President without appeals to the courts. In any event, the Court rejected the jurisdictional challenge by one of the saboteurs on the basis of his claim to U.S. citizenship, finding U.S. citizenship wholly irrelevant to the determination of whether a wartime captive is an "enemy belligerent" within the meaning of the law of war.[222]

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[219] *Ex parte* Quirin, 317 U.S. 1, 29–30, 35 (1942).

[220] 317 U.S. at 41–42.

[221] 317 U.S. at 28–29.

[222] *Ex parte* Quirin, 317 U.S. 1, 37–38 (1942) ("Citizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts, are enemy belligerents within