

(20) *General unfriendly attitude of Government toward Germany and Austria.*

If any American citizens, partisans of Germany and Austria-Hungary, feel that this administration is acting in a way injurious to the cause of those countries, this feeling results from the fact that on the high seas the German and Austro-Hungarian naval power is thus far inferior to the British. It is the business of a belligerent operating on the high seas, not the duty of a neutral, to prevent contraband from reaching an enemy. Those in this country who sympathize with Germany and Austria-Hungary appear to assume that some obligation rests upon this Government in the performance of its neutral duty to prevent all trade in contraband, and thus to equalize the difference due to the relative naval strength of the belligerents. No such obligation exists; it would be an unneutral act, an act of partiality on the part of this Government to adopt such a policy if the Executive had the power to do so. If Germany and Austria-Hungary cannot import contraband from this country it is not, because of that fact, the duty of the United States to close its markets to the allies. The markets of this country are open upon equal terms to all the world, to every nation, belligerent or neutral.

The foregoing categorical replies to specific complaints is sufficient answer to the charge of unfriendliness to Germany and Austria-Hungary.

I am, my dear Senator,

Very sincerely, yours,

W. J. BRYAN.

HON. WILLIAM J. STONE,

Chairman Committee on Foreign Relations,

United States Senate, Washington, D. C.

SEIZURE AND DETENTION OF NEUTRAL CARGOES—VISIT AND SEARCH—
CONTINUOUS VOYAGE

A striking feature of the European war, from the standpoint of the application of the principles of international naval law, is the inability or disinclination of some of the belligerents to exercise the right of visit and search in the manner in which it has heretofore usually been exercised, their failure to draw the well-recognized distinction between absolute and conditional contraband in applying the doctrine of continuous voyage, and the detention and requisition of neutral cargoes to which the preceding doctrines have been applied in the past in lieu

of their release or condemnation. The closing of the North Sea has in addition given neutral vessels which desire to follow the route via the north of Ireland and Scotland the choice of running the risk of being sunk by a mine by pursuing that course or going through the English Channel, and thus practically to visit the numerous cruisers stationed there.

On December 26, 1914, the State Department of the United States sent a note to Great Britain protesting against the frequent seizures and detentions of American cargoes destined to neutral European ports, a policy which the Secretary of State said exceeds "the manifest necessity of a belligerent and constitutes restrictions upon the rights of American citizens on the high seas which are not justified by the rules of international law or required under the principle of self-preservation." Waiving for the time being objections to the inclusion of certain articles in the lists of absolute and conditional contraband, the United States protested against the seizure and detention of articles listed as absolute contraband shipped from the United States to neutral countries on the ground that those countries do not prohibit the exportation of such articles. Furthermore, attention was called to the inconsistency in the British practice with reference to shipments of copper to Italy, which were seized in spite of the fact that Italy had by decree prohibited the export of copper. The United States objected also to the seizure and detention of American cargoes of foodstuffs and other articles of conditional contraband, destined to neutral territory, without any evidence to show that the shipments had in reality a "belligerent destination." It was further alleged that cargoes of this character have been seized for fear that they would ultimately reach enemy territory, although not so intended by the shippers. These acts, it was stated, greatly impaired the legitimate trade and commerce of the United States, which admitted Great Britain's right as a belligerent to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American cargoes, and to detain them "when there is sufficient evidence to justify a belief that contraband articles are in their cargoes." But "this Government can not without protest permit American ships or American cargoes to be taken into British ports and there detained for the purpose of searching generally for evidence of contraband, or upon presumptions created by special municipal enactments which are clearly at variance with international law and practice."

Great Britain made a preliminary reply on January 7, 1915, and on February 10, 1915, a long and detailed answer to the American protest was made. Statistics showing the condition of American trade both before and after the outbreak of the war were given, which Great Britain claimed "show conclusively that the naval operations of Great Britain are not the cause of any diminution in the volume of American exports," and that it may be fairly inferred from them that "not only has the trade of the United States with the neutral countries in Europe been maintained, as compared with previous years, but also that a substantial part of this trade was in fact a trade intended for the enemy countries going through neutral ports by routes to which it was previously unaccustomed."

Great Britain denied that its policy of seizing cargoes destined to neutral ports is inconsistent with the general fundamental principle of international law that a belligerent is entitled to capture contraband goods on their way to the enemy. Sir Edward Grey said:

Though the right is ancient, the means of exercising it alter and develop with the changes in the methods and machinery of commerce. A century ago the difficulties of land transport rendered it impracticable for the belligerent to obtain supplies of sea-borne goods through a neighboring neutral country. Consequently, the belligerent actions of his opponents neither required nor justified any interference with shipments on their way to a neutral port. * * * The advent of steam power has rendered it as easy for a belligerent to supply himself through the ports of a neutral contiguous country as through his own, and has therefore rendered it impossible for his opponent to refrain from interfering with commerce intended for the enemy merely because it is on its way to a neutral port.

In support of this statement he referred to the action of the United States in the Civil War in applying for the first time the doctrine of continuous voyage to the capture of contraband, and added:

If our belligerent rights are to be maintained, it is of the first importance for us to distinguish between what is really *bona fide* trade intended for the neutral country concerned and the trade intended for the enemy country, [by making] careful inquiry with regard to the destination of particular shipments of goods even at the risk of some slight delay to the parties interested. If such inquiries were not made, either the exercise of our belligerent rights would have to be abandoned * * * or else it would be necessary to indulge in indiscriminate captures of neutral goods and their detention throughout all the period of the resulting Prize Court proceedings. * * * It may well be that the system of making such inquiries is to a certain extent a new introduction * * * but it is a departure which is wholly to the advantage of neutrals, and which has been made for the purpose of relieving them so far as possible from loss and inconvenience.

On the question of the necessity of taking vessels into port for the purpose of carrying out an effective search, it is contended that the large modern steamships are capable of pursuing their voyages irrespective of the conditions of the weather, that many of the neutral merchantmen are encountered in places and under conditions which render the launching of a boat impossible, and that it is necessary to take them into calm water in order that the visiting officer may go aboard. The action of the United States in the Civil War and of the belligerents in the Russo-Japanese War and second Balkan War are cited in support of this practice. The note denies that it is the practice of nations to rest the conclusion of the search upon the evidence found on the ship, and not upon circumstances ascertained from external sources, and the action of the United States in the Civil War and in the Spanish-American War is cited in support of this position. The note concludes this subject as follows:

No Power in these days can afford during a great war to forego the exercise of the right of visit and search. Vessels which are apparently harmless merchantmen can be used for carrying and laying mines, and even fitted to discharge torpedoes. Supplies for submarines can without difficulty be concealed under other cargo. The only protection against these risks is to visit and search thoroughly every vessel appearing in the zone of operations, and if the circumstances are such as to render it impossible to carry it out at the spot where the vessel was met with, the only practicable course is to take the ship to some more convenient locality for the purpose. To do so is not to be looked upon as a new belligerent right, but as an adaptation of the existing right to the modern conditions of commerce.

In answer to the American complaint concerning the seizure and detention of conditional contraband destined to neutral ports, Great Britain admitted that the Order in Council of August 20, 1914, made no distinction between absolute and conditional contraband in the application of the doctrine of continuous voyage, and imposed upon neutral owners of contraband drastic conditions as to the burden of proof of the guilt or innocence of the shipment. It was set forth, however, that, as the result of negotiations with the United States, this practice was modified by an Order in Council on October 29, 1914, which admitted in large measure the principle of non-interference with conditional contraband on its way to neutral ports, and maintained the right to seize only when the ship's papers afford no information as to the person for whom the goods are intended or when the goods are ad-

dressed to a person in the enemy territory. In defense of seizures of this kind, Sir Edward Grey said:

It is only reasonable that a belligerent should be entitled to regard as suspicious cases where the shippers of the goods do not choose to disclose the name of the individual who is to receive them. * * * In the peculiar circumstances of the present struggle, where the forces of the enemy comprise so large a proportion of the population, and where there is so little evidence of shipments on private as distinguished from Government account, it is most reasonable that the burden of proof should rest upon the claimant.

Great Britain did not deny that she had formerly championed the principle that a belligerent should abstain from interference with foodstuffs intended for the civil population, but doubt was expressed as to whether the existing rules with regard to conditional contraband which are intended to protect such supplies are effective and suitable under present conditions. The approval by Bismarck in 1885 of the treatment of rice not intended for the military forces as contraband of war was referred to and the conclusion drawn that "in the absence of some certainty that the rule would be respected by both parties to this conflict, we feel great doubt whether it should be regarded as an established principle of international law." The note mentions the "elaborate machinery" organized by Germany for the supply of its army with foodstuffs from overseas, the tremendous war organization which obtains in Germany in which there is no clear division between those whom the Government is responsible for feeding and those whom it is not, the control by the government of all the foodstuffs in the country, and expresses Great Britain's conviction that the power to requisition will be used to the fullest extent in order to make sure that the wants of the military are supplied, from which the conclusion is drawn that "the reason for drawing a distinction between foodstuffs intended for the civil population and those for the armed forces or enemy government disappears when the distinction between the civil population and the armed forces itself disappears." More statistics are cited to show that supplies have been reaching neutral ports from the United States to an unprecedented extent since the outbreak of the war.

The note refers to the great inconvenience to which the war is exposing the commerce of all countries through the serious shortage in shipping available for ocean transport with the consequent result of excessive freights, but it denies that this is caused by Great Britain's interference with neutral ships, holding that "the detention of neutral

ships by his Majesty's Government with a view to the capture of contraband trade on its way to the enemy has not contributed nearly so much to the shortage of shipping as has the destruction of neutral vessels by submarine mines indiscriminately laid by the enemy on the high seas, many miles from the coast, in the track of merchant vessels."

As evidence of the liberal treatment of neutral commerce by Great Britain, the note mentions a rule of the Prize Court which allows the release of cargoes without the necessity of entering a claim in the court by simply producing the documents of title to the officer representing the Crown, who, later, in order to avoid the delays of interdepartmental communication, was succeeded by a special committee which sits daily, receives full reports by telegraph as soon as a ship reaches port, and decides whether it may be allowed to proceed and whether her cargo or any part of it must be discharged and put into the Prize Court. Whenever proceedings are instituted against portions of the cargo of neutral ships, every effort is made to secure the speedy discharge of the cargo and the release of the ship, and where the ship is held for the action of the prize courts it may, pending adjudication, be released on bail.

Finally, special attention is directed to the jurisdiction of the British Prize Court to deal with any claim for compensation by a neutral arising from the interference with ship or goods by the British naval forces.

MINES, SUBMARINES AND WAR ZONES—THE ABSENCE OF BLOCKADE

Another striking feature of the present war is the absence of blockade formally declared and applied in the way in which that doctrine has been previously recognized, namely, by the actual patrol of the enemy's coasts and waters with a sufficient number of cruisers to prevent ingress and egress. In its place "military areas" or "war zones," depending for their effectiveness upon submarine mines and torpedo boats, have been established not only within the enemy's waters, but upon the high seas. The penalty meted out to neutrals for entering these zones is not the penalty which may be legitimately invoked for breach of blockade, namely, confiscation of vessel or cargo after condemnation by a prize court, but, in case a neutral ship comes in contact with a mine or is encountered by a submarine, it must almost inevitably be sunk with its cargo regardless of whether either be guilty or innocent, and the passengers and crew, whether combatants or non-