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# **Rights of Neutrals on High Seas** INTERNATIONAL LAW IS UNCERTAIN IN A GREAT MANY WAYS

Neutral State Must Abstain From Assisting in War; No Such Duty on People.

## CONTRABAND IS DISPUTED

#### Entire Law of Contraband Remains Uncertain Declares Authority on International Law.

### (Continued From Page One.)

Such conduct is, in an intercontest. national sense, illegal.

A former counselor of the state de partment declares that, "The proof that it is unlawful is found in the fact that its commission is penalized. All acts for the commission of which in ternational law prescribes a penalty tre in the sense of that law unlawful. Penalties for Carrying Contraband.

The penalties today are serious. Con traband of war on board of a neutral vessel is subject to capture and condemnation; other goods having the same owner share the same fate; likewise the vessel itself, in case it is owned by the owner of the contraband The very carriage of contraband is also penalized by the loss of freight and detention of the vessel.

According to the same authority 'merchandise is not confiscated voy ages are not broken up, ships are not condemned for acts that are innocent these severe and destructive inflictions of penalties are imposed for acts that are unlawful,

In the present war the naval supremacy of England has made the exportation of arms from the United States of peculiar value to the allies. As a natural consequence the chief effort to bring about legislation prohib-

That fact has encouraged the administration to declare that any general restriction, pursuant to an act of congress, would possess an unneutral aspect, because it would lessen the relative superiority of the allies and so crease proportionally the power of Without venturing any their enemy. pinion as to the expediency of an embargo upon arms it is submitted that so far as legal principle is concerned of its own people from taking part in war and hence from subjecting themselves to the imposition of penalties for the commission of internationally illegal acts would not be up neutral conduct at which any bellig-

erent could justly take offense. It may be noted, however, that Professor Kuno Francke of Harvard uni versity has recently expressed the opinion that the establishment of an embargo on arms "would inevitably our government into conflict with England and might drive us into

war with England. are certain rights in the exerise of which by a belligerent a neutral, such as the United States, is bound to acquiesce. Two deserve attention-the right of blockade, and the right of visit and search.

## ESSENTIAL POINTS IN RELATIONS BETWEEN BELLIGERENTS AND NEUTRALS.

Is there a law of nations, prescribing rules of conduct and governing the relations between belligerents and neutrals? In some matters rules of conduct have developed into clearly de-

fined laws because of general acquiescence; in others the practice of nations shows great divergence of views.

It is the special task of the United States at the present time, where no rule of conduct exists, to enunciate a just principle and urge its recognition.

The government of a neutral state is obliged to abstain from taking any part in the war. It must not sell munitions of war or loan money to a belligerent though there is no duty imposed upon a neutral state to prevent its people from doing so.

It is the business of a belligerent operating on the high seas, not the duty of a neutral, to prevent contrabrand from reaching an enemy. The right to blockade and the right of search are two rights which

a belligerent may exercise and in which a neutral must acquiesce. A blockade, in order to be binding, must be effective, but a blockade does not embrace the right to establish a barrier across portions of the high seas adjacent to enemy territory and constituting a com-

mon highway for neutral commerce. The right of search is commonly exercised at sea. Protests by the United States against the present British practise of taking neutral vessels into port and detaining them there for search seems warranted by the mode of visit and search in past wars.

Extraordinary weapons of offense such as the submarine and automatic contact mine tend to impair what heretofore have been regarded as impregnable rights of a neutral.

The Hague conventions of 1907 regulated the use of such agencies of destruction which were adopted by the United States. Austria-Hungary and Belgium, however, are the only belligerents in the present war to accept the conventions without reservation. Montenegro, Russia, Servia, and Turkey refused to ratify them.

The occasional use of a neutral flag by a belligerent vessel under stress of pursuit and to deceive an approaching enemy is not contrary to international law

The right of people of the United States to send foodstuffs to belligerent states depends upon the solution of the problem as to what constitutes contraband of war and when it may be captured. Where rests the burden of proof as to whether foodstuffs, destined for a belligerent country are not for the use of the forces of that nation, is a difficult question, but the tendency is to place it upon the neutral shipper.

The whole law of contraband remains unsettled. Views as to what is absolute and what is conditional contraband vary. There is disagreement as to when conditional contraband is subject to capture and condemnation

pair what have heretofore been re- | diplomacy has the United States adgarded as the impregnable rights of dressed so stern a protest to German

authorities, and never before has it neutral. These extraordinary belligerent had such provocation for so doing. If laims are due in part to the existence the usage of nations be the criterion of extraordinary weapons of offense. of legal right, the freedom of the seas titled to rely. By the submarine and the automatic has long since ceased to be an aca-By the submarine and the automatic has long since ceased to be an aca-contact mine there is undertaken the demic dream, and is today the well needs further explanation. Iting such exportation has been made work of the battleship and the old recognized possession of every mariby German Americans or Irish-Ameri- fashloned torpedo boat. The automatic time state. In its friendly and courte- time states have long been disposed to

contact mine is no respecter of neural vessels, while the submarine may sion, and in its enunciation of inter- articles of commerce announced by need strong glasses and a still stronger national law, the instruction to Mr. conscience to hold back the fatal sting from any helpless victim best traditions of the department from

#### Hague Conventions Not Generally Ratwhich it emanated. ified.

The eighth of The Hague conven ions of 1907 made wise regulations for the use of mines on the high seas. While it has been ratified by the United States, Austria-Hungary and the preventing by the United States Belgium are the only belligerents in the present war to accept it without servation; and Montenegro, Russia, Servia and Turkey have refused to ratify it.

> The convention fails therefore t npose a contractual obligation upon any belligerent with respect to the inited States. Nevertheless, it is believed that the placing of submarine automatic contact mines in the high seas is none the less contrary to the established law of nations, for it not the nonparticipant as well as the parcroant but also holds in contempt the

tion, but she can have no right of doing it at our loss, nor of making us the instrument of it."

The United States succeeded in maintaining its position. According to the Jay treaty concluded the following year, provisions were described as "not generally contraband." In a series of treaties, beginning with that concluded with France February 6, concluded with France February 5, 1778, down to that concluded with talk February 25, 1871 the United Italy February 26, 1871, the United States secured agreement that foodstuffs should be expressly or by implication placed outside the category of contraband.

During the Russo-Japanese war Secretary Hay maintained a similar position and protested against the treatment by Russia of foodstuffs as contraband when the same was destined to private individuals in Japan. He denied the right of Russia to destroy all neutral commerce with the noncombatant population of Japan. He said: "The Russian rule obviates the necessity of blockades; it renders meaningless the principle of the declaration of Paris-that a blockade in order to be obligatory must be effective; it obliterates all distinctions between commerce in contraband and noncontraband goods; and is in effect a declaration of war between a people of a neutral and those of a belligerent state

Following the protests of the United States as well as of Great Britain, the Russian government on October 22, 1904, yielded and announced that foodstuffs should be deemed contraband if destined for "the government of the belligerent power, for its administration, for its army, for its navy, for its fortresses, for its naval ports, for its purveyors;" but that when addressed to private individuals such articles were not to be considered as contraband of war.

In view of the present discussion with England, the following significant statement of Lord Salisbury, uttered during the South African war, has been invoked by the United States: "Foodstuffs, though having a hos-

tile destination, can be considered as contraband of war only if they are for the enemy's forces; it is not sufficient that they are capable of being so used, it must be shown that this was in fact their destination at the time of their seizure."

With this statement as to conditional contraband the views of the department of state were declared on December 26 last, in a note to our ambassador at London, to be in entire ac-Upon this historic doctrine cord. American shippers are said to be en-

conditional contraband seen it applied to foodstuffs. Marious tone, in the candor of its expres- accept the threefold classification of Grotius in 1625. Articles adapted sole-Gerard is believed to be worthy of the ly to the use of war, such as guns and projectiles, have been regarded as absolute contraband and as such subject

Simultaneously on February 10 the to capture when destined to belliger-Inited States addressed a note to ent territory. Articles not adapted for Great Britain respecting the use of the warlike use have not been deemed to American flag. The occasional use of be contraband under any circumneutral flag by a belligerent vessel stances. Articles, however, susceptinder stress of pursuit and to deceive ble of use in the pursuit of peace as an approaching enemy is not contrary well as in that of war have occupied to international law. As the distin- a middle ground and have been de-

guished president of this universe well scribed as conditional contraband. said in a recent lecture, "The use of a Nations Not Agreed on Contraband. neutral flag by a belligerent ship is With respect to this class greatest

common in war and lawful. If the difficulties have arisen. Nations have flag of a particular neutral nation was not agreed generally as to what artised frequently in that way, no doubt cles should be so regarded; nor have he neutral nation would remonstrate." they agreed as to the circumstances Resents Use of American Flag. when conditional contraband is subject The department of state has pro- to selzure and condemnation. As has ested against the alleged explicit been seen, the United States asserts sanction by the British government for with confidence that articles, such as established law of nations, for it not its merchant ships generally to fly foodstuffs, attain no contraband char-only recklessly imperils the safety of the American flag within certain por- acter by reason of being destined tions of the high seas presumed to be merely to the territory of a beiligerent,

become subject



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#### Blockade Must Be Effective.

force of communication with the ports or coasts belonging to or occupied by the enemy. Since the Declaration of Paris in 1856 nations have been agreed that a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coast. The right of blockade not embrace the right also to establish by force, even if it were possible to do so, a barrier across portions of the high seas adjacent to enemy ter- greatest when it can operate in a zone ritory and constituting a common highway for neutral commerce.

Nor does the right of blockade justify a belligerent incapable of exerclsing it in cutting off all access of neutral vessels to the enemy's ports United States have the right to proport, except in so far as they are captured and condemned or detained by reason of the carriage of contraband or the commission of some unneutral service.

Every belligerent possesses the right vessel on the high seas for the purpose of ascertaining its true nationality. and of the cargo itself is commonly made at sea

tral vessels into British ports and have istence of contraband. Sir Edward enemy ships.

Grey has defended this action by the plea of necessity. He declares that declared on February 10 in an instrucis real ground for suspecting the pres- of a belligerent in dealing with neuence of contraband, the vessels should tral vessels on the high seas is limited for this practice it would have to be derstood to propose). It is said that tured. completely abandoned,"

naval authority of the United belligerent nationality and the contraleading States-Rear Admiral Stockton. Pro- band character of its cargo" would be fessor Oppenheim of Cambridge university declares that if a search at "has brought nothing to light against the vessel seizure should take place only in case of grave suspicion."

Protests Taking Ships to Ports. ject to the same suspicion. The rea-The department of state "readily adestablished by visitation and search. tion, mits the full right of a belligerent to visit and search on the high seas the Hence the United States declares that vessels of American citizens or other if a German commander, presuming neutral vessels carrying American goods, and to detain them when there used in good faith, should destroy on the high seas an American vessel, or sufficient evidence to justify a belief that contraband goods are in their the lives of American citizens, it would cargoes." It protests, however, against he taking of American ships or Amerother light than as an indefensible vioican cargoes into British ports and their detention in such ports "for the purpose of searching generally for ev-idence of contraband." In view of the isting between the two governments." mode of exercising the right of visit fand search in past wars, the protest of the United States is believed war-

rigid accountability and the United ranted. During the present war the United States would be constrained to take whatever steps might be necessary to States has been called upon to ac quiesce in the assertion of certain belsafeguard the lives and property of its tended that provisions were not conligerent claims respecting the mode citizens, and to preserve for them the of conducting hostilities that not only full enjoyment of their acknowledged lack precedent, but also challenge our rights on the high seas. Never before in the history most vital interests and tend to im-

uente' by hostile warships, and has and that they only right of the neutral to the unmolested justly requested that British merchant capture and condemnation when shown use of the high seas. So cautious a writer as Professor vessels be restrained from such use to be destined for a distinctively milof it. While, on the one hand, Ger- itary or naval use of a belligerent. John Bassett Moore has recently de-

clared that "as a method of warfare many is warned against raising any presumption that a vessel in the Eng- such articles to a belligerent that this must be regarded not only as an ish channel flying the American flag makes them contraband, but the proof atrocity which no nation is at liberty A blockade may be defined as the to perpetrate, but also as a direct vio-obstruction by a b ligerent naval lation of a clear international right belongs to the enemy and may be treated accordingly, England, on the public military service. A serious difother, is warned not to tempt Germany floulty that confronts maritime nawhich governments are justified in asto carry out its threat by making the tions in dealing with the matter today serting on all occasions." American flag a certain token of a is one of proof. The question is, when The use of the submarine has already British bottom. That Adam was for- is a cargo of foodstuffs for example, given rise to controversy. The sub-marine warship labors under diffibidden to eat of the fruit of the tree to be regarded by a belligerent cruiser did not excuse Eve's generosity, and and by a prize court in the country of it will be recalled that a serpent the contor destined in fact for the ulties. When partially submerged it annot readily ascertain the identily tempted both. of foreign vessels which it encounters; One avowed cause of the German ad- for the enemy's noncombatant populaand the success of its operations renmiralty proclamation of February 4, tion? ders practically impossible any exer-cise of the right of visitation and and reiterated in a note of the Ger-

man ambassador at Washington Feb- other way: On whom is the burden of search. Its efficiency is, therefore, ruary Great Britain to destroy legitimate contraband or not? It must be clear wherein every other vessel not easily neutral trade with Germany and to on principle that if a neutral shipper and simply recognizable may be prima starve the German people. The United has the right to send foodstuffs to facle ragarded as a legitimate object States is vitally interested in this the territory of a belligerent state the of attack

Hence the elimination of all neutral ships from that zone simplifies its by other processes. Vessels of the problem. Thus the very mode and exigencies of submarine warfare emphaceed to every unblockaded belligerent size anew the essential antagonism between belligerent and neutral interests, and serve in part to account for the recent German proclamation. On February 4 last the imperial admiralty announced that the waters

surrounding Great Britain and Ireland, to visit and search a neutral merchant including the whole of the English channel, were to be considered within the seat of war; that after February 18 and the nature of its voyage and the all enemy merchant vessels found in character and destination of its cargo. those waters will be destroyed, and The examination of the ship's papers that neutral vessels expose themselves to danger within this zone, because in

iew of the misuse of neutral flags During the present war British naval said to have been ordered by the Britauthorities have habitually taken neu- ish government and of the contingencies of maritime warfare it may not be conducted leisurely and pro- possible always to exempt neutral vestracted searches to ascertain the ex- sels from attacks intended to strike

sonableness of the suspicion must be

"difficult to view the act in any

ation of neutral rights, which it would

be very hard, indeed, to reconcile with

It is further announced that if such

deplorable situation should arise the freight.

ness to interference with its foreign trade and to regard it as a token of In response the department of state of the cargo is hostile. upidity under modern conditions, where there tion to Mr. Gerard that the sole right Need Solution for Contraband Problem. The right of the people of the United States to send foodstuffs to belligerbrought into port for examination: to visitation and search, unless a ent states is bound up in the solution in no other way." he adds, "can the blockade is proclaimed and effectively of the problem as to what is contra- can courts, has hesitated to declare right of search be exercised, and but maintained (which Germany is not un- band of war, and when it may be cap- that the right asserted by Great Brit-"Contraband" is a term em- ain is contrary to international law. to declare or exercise a right to at- ployed to describe an article which is The department has, however, made

That suspleions may be strong tack and destroy any vessel entering liable to capture because of its use in earnest representations to Great Britenough in special cases to justify the a prescribed area of the high seas the prosecution of war and because of ain protesting against the seizure and British practice is the view of the without first certainly determining its its hostile destination. The declaration of Paris in 1856, to American cargoes bona fide destined to which maritime states are now gen- neutral ports. an act unprecedented in naval warfare. crally agreed, declared that goods of It is apparent that the whole law of Even suspicion of the misuse of neutree the subjects of a belligerent on board contraband remains unsettled. There tral flags affords, it is said, no war- a neutral vessel were free from cap- is a divergence of view as to what is rant for the presumption that all ships traversing the prescribed area are sub- value of the declaration depends upon ditional contraband; there is disagree-

rather for its own.

slow to anger, absorbed in the pursuit

merce is thwarted by belligerent na-

tions, its chief interest is blocked, and

the elaborate mechanism of its na-

tional life sorely disordered. Since the

When, therefore, its foreign com- demnation."

intercourse with the outside world.

ture, except contraband. Hence the absolute contraband and what is cona just estimate of what is or what ment as to when conditional contrashould be embraced within the excep- band is subject to capture and condemnation. There is a tendency to place In the war between France and Eng- upon the neutral shipper engaged in land growing out of the French revo- the most innocent transaction an overthat the American flag was not being lution the United States found itself whelming burden of proof as the only

whether

in a serious predicament. A British means of saving his cargo from comorder in council of June 8, 1793, au- plete loss. thorized English warships and priva-Unless we remain firm as a neutral, teers to stop and detain all vessels the right to enjoy the freedom of the containing foodstuffs bound to any seas will pass away forever. Unless port in France, or one occupied by we maintain the right to feed the hun-French armies, for the purpose of pur- gry, neutral commerce with belligerthe friendly relations now happily ex- chasing the same, and declaring that ent states will shrivel into insignifia ship should be released after pur- cance. To fulfill its mission the United chase and after due allowance for States needs the cooperation of every neutral power. It needs the friendimperial government would be held to U. S. Made British Back Up in 1793. ship of every state engaged in war.

conditonal

The purpose of the English order Above-all, it needs the devotion to its was to reduce France by starvation. own cause rather than to any other of Jefferson, our secretary of state, con- every American citizen.

traband and could not lawfully be In the printing of the acts of the made such for the purpose desired. As British parliament the old spelling of to the plan of England, the said on Sep- the world "entitled" is still preserved, tember 7, 1793: "She may, indeed, feel i. e., "intituled."