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THE LAWS OF NAVAL WAR, AS EXEMPLIFIED IN THE PRESENT STRUGGLE.

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(Translated by permission from the *Rivista Marittima*,
by Asst. Paymaster P. Smiles, R.N.)

THE fundamental principles of maritime law, as recognized in the conference held in 1909 on the initiative of England, which are known by the name of the "Declaration of London," have been, in their most important provisions, that is to say, those bearing on the freedom of commerce and navigation, violated by both belligerents. The neutrals have had to bear the consequences, and their protests to Berlin and London have not availed to safeguard their rights.

This is not the time to make accusations against one or other of the belligerents: that can be done, and with less chance of error, after the war, when we have more definite information as to the facts. It must be admitted, however, that, if some of the acts committed constitute an open violation of the law of nations as confirmed by centuries of practice, others, on the contrary, have been caused solely by the use of new instruments of war, whose utility had not been previously realized. The laying of mines on the high seas, and the marvellous exploits of aircraft and submarines have given an altogether new character to naval war, and consequently many principles which regulated the conduct of belligerents in the past do not apply to the conditions of to-day. For example, what State could maintain a "real and effective" blockade, according to the classic definition of the Declaration of Paris, in the face of submarine attacks? Who could question the legitimacy of "war zones" in view of the ever-growing use of mines? Or, who could support the theory of conditional contraband when the manifold needs of a modern navy are considered? The present war has caught both the warrior and the legislator unprepared, and in our astonishment we are apt to consider as violations of international law some actions which have really been rendered necessary by the new forms taken by naval war, and which will, if possible, be legislated for on the conclusion of peace.

What is absolutely unjustifiable and really to be deplored is that the use of new weapons has led the belligerents to employ, by way of reprisal, illegal and inexcusable methods of war which take us back to the barbarous ideas of several centuries ago. Perhaps matters would never have reached such a point if the learned jurists, who met at London in 1909 to compile the code of International Law, had limited themselves to affirming general principles without going into unimportant details,

and if they had not sacrificed the legitimate rights of belligerents through over-consideration for neutral interests.

The Conference attempted to settle the vexed question of contraband by reaffirming the theory of Grotius (1625) that articles should be divided into three categories—absolute contraband, conditional contraband, and the free list—without realizing the inadvisability of laying down definite rules in advance, for every war and for every nation, as to what should be considered contraband: for it may well happen that, as the needs of each State are different, it might suit one and not another to consider a given article as contraband. The old rule of maritime war, according to which States proclaimed from time to time what in their opinion should be considered as contraband, was wiser and more practical. If this rule had been adhered to neither of the belligerents would have been led to violate the Declaration of London in this respect.

The most notable fact of the present conflict is that England, after the first few months of the war, prohibited the importation of food stuffs into Germany, closing the German ports to grain ships from neutral countries, and this in flagrant violation of the Declaration which was accepted in the Order in Council of 4th August.

As we know, grain and all articles of human food were (in our opinion wrongly) classified in the Declaration of London as conditional contraband, which means that they may be confiscated only when consigned to an enemy for the use of his armed forces. Accordingly, if the provisions of the Declaration are carried out, food stuffs can never be confiscated if intended for the support of the civil population. The history of trade in grain and provisions in time of war is a long one, and in order that we may judge of the conduct of England, the precedents for her action must be briefly summarized, beginning from the second half of the 17th century, at which time the present law on the subject began to take shape. The Treaty of the Pyrenees of 7th November, 1659, limited contraband to articles of military use only, allowing free trade in grain and food stuffs, except in cases of siege or blockade. This treaty was, so far as concerns us, confirmed by the important Treaty of Utrecht of 11th April, 1713, and served as a guide, through the Anglo-Russian Commercial Convention of 1766, in determining the principles which Catherine II and of Russia proclaimed in 1780 in her famous Declaration of the rights of neutrals in naval war.

This state of things changed with the wars of the French Revolution, all of which possessed a special character of illegality. In the Decree of 9th May, 1793, the National Convention, in view of France's great need of provisions, ordered the confiscation of all ships, carrying a cargo wholly or in part of food stuffs, met at sea by the naval forces of the Republic, paying for the provisions seized besides granting a suitable indemnity to the owners of the ship and the cargo. In acting thus the French did not consider food stuffs as contraband, but

The importation of grain into German ports was formally forbidden when the German Government committed the error of taking over all stocks of grain in the country. But, even before this, very few cargoes of grain bound for German ports were able to reach their destination.

exercised over them the right of pre-emption, much in use at that time. England replied to this measure with another more severe, directing, in the Order in Council of the 8th June following, the capture and confiscation of ships laden wholly or partly with provisions consigned to French ports, reserving to herself the right of pre-emption in the case of ships bound for other countries, paying to these last the value of the cargo at the price current at the port of lading, increased by 10 per cent. The United States, who were exporters of grain, protested vehemently against this procedure and threatened to intervene in order to guarantee the freedom of neutral commerce. England, in the Convention of 19th November, 1794, admitted the American claims and paid an indemnity of 3,600,000 dollars as compensation for the losses suffered by United States citizens. On this occasion the principle was affirmed that whenever England was forced to exercise the right of pre-emption of cargoes of grain, *which in no case could be considered as contraband*, she would seize them upon the terms of paying the invoice price with a reasonable mercantile profit thereon, together with freight and demurrage.

During the war of 1885 between France and China, the former country declared rice contraband of war. England protested vigorously, declaring that "Her Majesty's Government could not admit the principle, contrary to custom and the rights of neutrals, of considering food-stuffs as contraband of war unless destined for a belligerent to enable him to continue military operations." After this protest no cargo of rice was confiscated.

In the early part of the Boer War the English captured some ships, laden with flour and other food stuffs, sent by American subjects to private citizens in the Transvaal. The United States complained to England of this violation of the customary rights of trade in food stuffs in time of war, and the English Government in its reply recognized the illegality of its action. The following declaration which was made by Lord Salisbury on behalf of the British Government during the negotiations is worthy of note:—

"Food stuffs consigned to enemy territory cannot be considered contraband of war unless destined to provision the enemy's forces. It is not sufficient that it should be possible for them to be used for such a purpose, it must be shown that such was in reality their destination at the time of capture."

In the Russo-Japanese War of 1904 Japan considered food stuffs as contraband only in cases where they were destined for the troops of the enemy, or consigned to enemy fortresses for military use. Russia, on the contrary, considered them as contraband in every case, even if destined for the civil population of Japan. England contested the legality of the Russian claims, defending the principle of free transport of grain, when not intended for the armed forces of the enemy, even though consigned to one of his ports. While negotiations were in progress, a steamer laden with flour, sent from the United States and consigned to commercial houses in Japan, was captured and condemned by the Vladivostok prize court. The long discussions that ensued

between England, the United States and Russia induced that country to modify, on 22nd October, 1904, her proclamation of contraband, bringing it into agreement with the views of the protesting nations. The new proclamation contained the following provisions: "Rice will be considered as contraband only if destined for the belligerent government, its administration, army, fleet, fortresses, naval ports or contractors. It will never be so considered if destined for private citizens."

In the Turco-Italian War, while Italy adhered to the Declaration of London, Turkey declared grain absolute contraband, but, on Russia protesting, she was obliged to consider it as conditional contraband. Finally, during the Balkan War, Greece, in her note of 17th December, 1912, contrary to the principles stated above, classed provisions as absolute contraband.

It is clear from this rapid summary of events that there have always been numerous and grave differences of opinion between belligerents and neutrals as to the treatment, in time of war, of trade in provisions not destined for the armed forces of a belligerent, and that England, when a belligerent, has always opposed such trade, though as a neutral she has never ceased to defend it.

Some space must be devoted to explaining these changes of conduct on England's part.

Great Britain has never had a law of contraband, and has very rarely been a party to international treaties on the question. She has ever held that contraband was essentially a political and not a legal matter, and has always, time after time, treated the subject from a purely political point of view. It is owing to this that England's position, whether as neutral or belligerent, has been the deciding factor in determining whether the list of contraband articles should be unduly restricted or unfairly comprehensive. As a belligerent she has always forbidden trade in an enormous number of articles, even if of purely peaceful use, provided only they were indispensable to her adversary. As a neutral she has always protested vehemently, in the name of the freedom of neutral navigation and commerce, against the inclusion by belligerent states of any goods which were produced by her.

To aid her in this policy, she has from the earliest times made use of the convenient system of "Orders in Council," which answer to the needs of the moment, are not binding on the country for more than a certain time, and which can be modified according to the political situation. In the various treaties concluded in the 18th century she adhered generally to the provisions of the Treaty of Utrecht of 1713, but in the war of 1793 she prohibited the importation of grain into France, contrary to the express stipulations of the agreement she had come to with that State in 1786. In the 19th century she consistently refused to bind herself by any convention, preferring to indicate only what trade it might suit her to prohibit in a future war; and it is for this reason that during the Crimean War she was in agreement with France on all points of naval law except on that of contraband. The English Government then declared to Parliament that "England had wished to reserve, as she had done in the past, the right of deciding

for herself in matters of contraband, without entering into any agreement with other Powers, according to the circumstances of the time as they might present themselves, and her actual interests in each case." The position which the English Government has always taken up as a belligerent has been to declare trade in food stuffs free if intended for the civil population of an adversary. This principle, however, has never been practically applied, because she reserved in each case the right of confiscating, as she repeatedly did, all those cargoes which, in the judgment of one of her state officials, were probably destined for the use of the armed forces of the enemy. As has already been mentioned, in the Order in Council of 4th August, 1914, England, followed faithfully by France, declared foodstuffs conditional contraband (an act which prevented their confiscation if intended for private citizens), but in practice she has treated them as absolute contraband. English and French ships have exercised the right of search with an absolute disregard of the rules of war, and on occasions French ships have even sent neutral vessels into a French prize port on the mere suspicion of contraband, without examining the cargo or even the ship's papers. The situation, thanks to neutral protests, has gradually improved, but everything leads one to think that the treatment of ships bound to German ports with free goods or conditional contraband on board has undergone no change, and that the system of annoyance still continues. This is proved by the fact that in order not to violate too flagrantly the Declaration of London accepted in the Order in Council of 4th August, the English Government created, in the Orders in Council dated 20th August and 29th October, a totally new theory of contraband in open defiance of all the rules of maritime law. The enforcement of the Order in Council of 29th October on the application of the Declaration of London will be remembered as one of the most high-handed actions ever committed by the English Government.

England to-day thinks it necessary to take these severe measures, which affect both her adversary and neutral nations, in violation of the principles of international law which are the inheritance of the world at large, but it is open to doubt whether she would suffer them were she neutral. In justification of her action she declared in her proclamation that she was forced to take these steps by "the special conditions of the war." We may be allowed to express a doubt as to the existence of these special conditions (which serve perhaps to establish an alibi for the future when England is differently situated) and refrain from further discussion of the matter which would lead us far beyond the limits of this article.

One, however, of the provisions of the Declaration is, in our opinion, fully justified, and that is the prohibition of trade in grain and food stuffs with Germany. Even this is really contrary to the Declaration of London, but, when the necessities of war are borne in mind, it cannot be admitted as reasonable that food stuffs should be allowed to pass freely into a belligerent country when the need of them might make her seek for an early peace. The distinction between the civil population and the armed forces of a nation in this connection is a very fine one, and it is, to say the least of it, hard to believe that a

population well supplied with food would not give some of it to the armed forces in various indirect ways. The part of the Declaration of London which bears on this subject is impracticable, and, in consequence cannot be followed. Besides, we have seen in our short resumé of the history of food stuffs in various wars what has time and again happened. When the belligerents have been stronger than the neutrals they have interfered with the trade of the latter, in the name of "the special conditions of the war." When, on the other hand, the neutrals have been the more powerful, the belligerents have had to leave their commerce unmolested in the name of "freedom of commerce, etc., etc." Free trade in provisions was proclaimed out of no delicate feeling of compassion for the civil populations of belligerent states, but exclusively in the interests of the neutrals, who were never willing to give up their profitable trade.

Food stuffs, when an adversary is in want of them, have a value equal to that of arms themselves, and trade in them may be forbidden. That is the only rule which meets the necessities of war. All other rules but lead a belligerent to violate them, because they do not correspond with his requirements.

England has repeatedly declared, both through official and semi-official channels, that Germany is waging this war in a manner contrary to every principle of International Law, alluding, thereby, to the use of mines and submarines. Germany, in her turn, has made the same accusations against her adversary, and has replied to reprisals by counter-reprisals. Several questions have been raised by this state of affairs, that of the laying of mines on the high seas, the creation of war zones, the use of a neutral flag, and—more important than any—the blockade of the whole of the English coast by means of submarines.

The Second Hague Convention of 1907 did not forbid the use of mines on the high seas, but, while permitting it, laid down that drifting mines should be so constructed as to become harmless on the expiration of, at most, an hour after the layer had lost control of them, and that anchored mines should be so designed as to become harmless should they break away from their moorings. Belligerent States were also allowed to make use *temporarily* of the underwater material existing in their stores until it could be modified according to the new regulations. Eight years have passed since then, and, as time enough has elapsed for all mines to have been modified, old type mines may no longer be used. In our opinion neutrals are fully within their rights in protesting against losses caused by mines not constructed or not modified in accordance with the rules of the Hague Convention, and in claiming compensation in every case.

Though, however, we know which Power has sown the Adriatic with mines, we have no such information as to the North Sea, nor do we even know what kinds of mines have been employed in that area. England has accused Germany of having laid mines everywhere, making use at need of hospital ships, fishing boats, and merchant vessels flying a neutral flag. Germany in turn has indignantly denied the accusation and claims that English and French mines, still active, though

floating at the mercy of wind and tide, are constantly found, and cause every day severe losses, especially to peaceful traders.

In all probability both belligerents, despite their interested denials, have sown the North Sea with mines, so that it is difficult to bring home to one side more than the other the responsibility for the many merchant vessels sunk. Perhaps, as happened in the case of the Russo-Japanese War, we shall never know the truth. An interesting point, however, is that England "in order to preserve as far as possible neutral traffic from the danger of mines laid in the North Sea," declared on 2nd November last the whole of the North Sea a military area. On creating this area, which, in fact, closed the North Sea to traffic, she advised neutral ships to follow the routes advised from time to time by the Admiralty, adding that ships which disregarded such recommendations would run serious dangers for which the Admiralty would not hold itself responsible.

We can at once dismiss the hypothesis that England created this military area in the interests of the neutrals, since she has repeatedly shown that she does not consider them in the least. Besides, it is only necessary to read the articles which have appeared in the English Press since the beginning of November to convince ourselves that the ends which she wished to attain by her action were many. The truth of the matter is that, owing to the submarine tactics adopted by the Germans, it was impossible for England to blockade the German coasts, for, had she done so, her blockading ships would, one after the other, have met the fate of the "Cressy," "Aboukir," "Hawke," etc. To meet this situation, which gave Germany a certain amount of freedom in her own waters and rendered it possible for her to obtain supplies from neutral ships, England found that the only measure likely to be effective was to proclaim the North Sea a military area, so as to force neutral commerce to follow a predetermined route, where it could be supervised in safety and the right of visit exercised with a maximum of convenience. Vehement protests were addressed to London by the Scandinavian Governments against this measure which, far from being a convenience to neutral traders, as England had declared, forced ships to leave the ordinary routes and make a long detour, without being compensated in any way, simply in order that the English cruisers could visit them more easily to prevent traffic in contraband with Germany.

The most curious part of the matter is that, while England declared that the danger zone lay off the European coasts, Germany, on her side, proclaimed that the route recommended by the English Government was unsafe. Perhaps Germany was not altogether wrong in her assertion, since in fact, the North Sea currents do drive floating mines towards the coast of England. As experts can discuss this question with more authority than ourselves, our remarks upon the doctrine of "war zones" will be confined to their bearing upon International Law.

The "military area" as defined by the British Government is not legally a blockade, nor does it resemble one. But, if applied rigorously, it can produce many, if not all, of the effects which are ordinarily

attained by a blockade. In fact, if the "military area" were made really dangerous, ships would be obliged to follow the track laid down by the belligerent, who would then be able to supervise all traffic in contraband with the greatest of ease. So far there is no violation of law; on the contrary, a belligerent who lays mines or comes to know that mines have been laid in a certain area is required to warn all ships so that they may keep clear of the danger. The name "military area" is new, but not the principle, which had been foreseen in the Eighth Convention, and it is strange that the English Press, generally so well informed on questions of maritime law, should have justified the measures taken by its Government as being "demanded by the new conditions of modern war." Military areas do not conflict with the principle of the freedom of the sea or the liberty of innocent trade, and in this respect mark an improvement on the hard conditions imposed by a blockade. These areas close part of the sea to navigation, but, while ships which cross a blockade line are confiscated; those which enter a military area do so at their own risk. Again, a blockade prohibits all trade between the open sea and the blockaded territory, the military area is directed only against contraband traffic. The system might be better regulated if it is true, but the fact that it is not explicitly mentioned in International Law does not necessarily render it illegal. Laws cannot always remain fixed and unaltered; they must adapt themselves and change with the conditions of life, otherwise they would only be suited to a state of things long past. Until the legislator gives us some new pronouncement on the subject, we have to act on the analogies or inferences drawn from the laws existing, and these in the present instance legalize and justify the underlying principles of military areas.¹

The effect of the proclamation of the "military area" must have been great, since Germany, who was beginning to suffer from the pressure which England exercised on sea-borne trade, more especially with America, had recourse to the same measure, though making its conditions more severe by threatening to sink any merchant ship found in the prohibited zone. The note issued by Germany on 4th February to the ambassadors of the neutral Powers will be as memorable in the history of maritime law as were the Berlin decrees of 1806.

The note errs in speaking of a "military area"; it is, with the addition of the infliction of ferocious penalties on all who should violate it, nothing more than a notification of the blockade of the whole of the English coast—a new form of blockade by mines and submarines.

Before entering into the legality of this measure the question of the use of neutral flags by English merchant vessels in order to avoid attack must be considered. Nothing is laid down in the Hague Conventions in prohibition of this practice, which does not now appear for the first time in naval war. The only existing rule on the matter, accepted by all nations alike, is that a ship must not commit a hostile

¹ Article 3, Eighth Convention. "Belligerents must, when mines are no longer under observation, report the dangerous areas as soon as military exigencies permit. Such notifications should be made through diplomatic channels."

act under a flag other than her own. In 1875 the French Council of State declared that the use of false colours was permissible in order to avoid examination or capture by ships of war. Perels, formerly Councillor to the German Admiralty, in his treatise on International Law (pages 210, 214, 234), holds that ships may fly any flag except that of the captor when endeavouring to escape capture. Section VI., paragraph 8, of the German Prize Manual, lays down that a warship which is chasing a merchant vessel to visit and eventually capture her need not show her ensign, but may hoist any mercantile flag. If the pursuing ship is accorded this privilege it would not be reasonable to deny it to the merchant vessel which is trying to escape her. In British law (Merchant Shipping Act of 1914 and Instructions to Consuls 1914) foreign ships are allowed to make use of the British flag to avoid capture by the enemy.

The only effect of flying false colours is to force the enemy to ascertain the real nationality of the ship, thus making him carry out the proper procedure of visiting the ship before sinking her. As it is only possible to ascertain the nationality of a ship in one way, that is by boarding her, it follows that Germany, when she protests against the use of neutral flags, wishes to abolish the old and universally-accepted right of visit. If without prejudice we were to admit that merchant ships should fly no other flag than their own, Germany would ask for the application of a law to this effect so as to enable her to violate another law already in existence.

The question was also examined in 1906 by the United States War College, in whose minutes we read:—"A neutral would be acting reasonably in demanding that his national ensign should not be used by one belligerent to cover any act that might be injurious to the other, which, as far as the neutral is concerned, is a friendly State. In cases in which the ship flying the false colours is a merchant vessel, it is held that to forbid to her the use of a hostile or neutral flag, as a possible means of escaping the notice of her enemy, and so avoiding capture, would be equivalent to depriving her of a legitimate stratagem which involves no deceit, and which causes no harm to the neutral whose flag is used."

The common opinion of lawyers, as well as the general custom of the sea, permit, as we have seen, the use of false colours in certain cases. The pretensions of Germany, therefore, have no legal foundation. Stratagems are as old as naval war, and no Court or Convention has ever tried to restrict their use. We cannot, on the other hand, admit that a ship may be destroyed, without any proof and only upon a bare suspicion, on the plea that it is not possible to prevent a neutral vessel being the victim of an attack, which, in the intention of the attacker, was directed against the ship of a hostile nation. There are no words strong enough to condemn such a barbarous principle, and it is to be hoped that civilized nations will never consent to the inclusion of lynch law in the international code.

Neutral States have, as some protection to their ships, devised means of rendering them readily distinguishable at a distance. In this way the Scandinavian Governments have painted their national

ensigns on the sides of their ships; the Holland-America Line has fixed luminous boards on the bridges of its steamers, with the name of the ship and her port of registry painted thereon; the Rotterdam Line has decorated its ships' sides with a band of the national colours, and the same has been done by our own mercantile marine. These measures, which serve only as a cloak for the timidity of neutrals and their powerlessness to make themselves respected, are greatly to be deplored. Neutrals have done nothing in the present war that they had not a perfect right to do, and all considerations of dignity and safety should have led them to unite to secure the withdrawal of the hateful measures which have already cost so many lives. For much less was the League of Armed Neutrality formed a century ago.

Blockade has not a very long history, being almost unknown before the 16th century. It was used for the first time in the war of 1584 between Spain and Holland; the blockaded coasts were those of Flanders, but, although neutrals were forbidden to navigate or trade to those parts, no warship was stationed to maintain the blockade. The circumstances were the same in the blockades declared by Holland against England in 1652 and 1666, and against France in 1672. Following this example Spain blockaded the coast of Portugal in 1663 without sending any ship there.

These were called "paper blockades," and reached their climax in the blockade of the French coasts in the same year, which was proclaimed by England and Holland after the Treaty of Whitehall of 26th August, 1689, notwithstanding the fact that a few years before, in 1667 and 1671, the same two Powers had declared that a blockade must be effective *urbibus et locis ab una alterave parte obsidione juxta realiter cinctis*. Sweden and Denmark, however, made such violent reprisals against the English and Dutch as to make them restore all captured prizes and withdraw their pretensions.

In the various treaties concluded in the 17th century between the European Powers, the laws of blockade were standardized, and rules were laid down even as to the number of ships necessary, and their distance from the shore. England, however, having defeated her formidable rival, would have nothing to do with these regulations and would not renounce the doctrine of "paper blockade." At that time, and up to the 19th century, trade with the colonies was carried out by ships of the Mother Country alone, to the entire exclusion of foreigners. The colonial system led up in time of war to the "Rule of the war of 1756," by which neutrals were forbidden to carry on in war time any trade which was closed to them during peace. Under this regulation England, in the Seven Years' War, wishing to prevent the Dutch from trading between the French colonies and their Mother Country (a trade which was reserved to French subjects only in time of peace), proclaimed a blockade of the whole French coast. Holland tried to resist, but was worsted, almost all her ships being captured, though as a special act of grace, they were immediately restored. On this occasion the British Government proclaimed that from that time any ship which tried to run a blockade would be captured and confiscated. In 1775, in revenge for the help given to the American colonies,

England declared a blockade of the French coasts without stationing any ships in those waters. James Marriot, the judge of the Admiralty Court, said, in 1780, in this connection, "Great Britain blockades *naturally*, by her dominion of the seas, all the ports of France and Spain. She has every right to make use of her advantageous situation as a gift bestowed upon her by Providence." These and other far-fetched pretensions forced the neutral States to combine in defence of their rights. On 28th February, 1780, Catherine II. took them under her protection and published the famous decree in which she affirmed the fundamental principles of modern International Law. Blockade was then defined for the first time. The definition was as follows:— "In order to determine what constitutes a blockaded port that denomination is only given where there is, by the disposition of the Power which attacks it with ships stationary and sufficiently near, an evident danger of entering." This definition was accepted by almost all nations, and was re-affirmed in several treaties, among others that of 11th January, 1781, between France and Russia, and that of 17th January of the same year between the latter country and the Kingdom of the Two Sicilies.

At the commencement of the wars of the French Revolution, England took the very same measures against France as she is now (1st March) taking against Germany, that is to say, she ordered the capture of all neutral ships sailing for French ports. "France," said Pitt, "must be cut off from the commerce of the world, and treated as if she had only one port and one city, and as if this port and city were blockaded and invested both by land and sea." The neutrals protested, and, as their efforts were of no avail, signed, in December, 1800, a new agreement which confirmed that of 1780 as regards the effectiveness of a blockade. England took her revenge by bombarding Copenhagen and capturing the Danish fleet on 2nd April, 1801. This act caused general indignation in Europe and was deprecated by the English Parliament itself, which advised the Government to come to an agreement with various States. In the Treaty of 17th June, 1801, England admitted that no coast should be considered as blockaded off which an effective force was not stationed. Immediately afterwards however, far from adhering to the principle laid down by which this force was to be composed of "ships stationary *and* sufficiently near," she substituted "or" for the word "and," in this manner completely changing the definition of a blockade. To blockade a coast according to English ideas it was unnecessary to have ships stationed there and sufficiently near, it was enough that these ships should cruise up and down the coast. In this way the "cruising blockade" was born.

In spite of her agreement England proclaimed a blockade of the mouths of the Elbe on 28th June, 1803, of the Weser on 26th July, and of the French Atlantic ports on 9th August, without sending any ships there at all.

Three years later, on 16th May, 1806, she proclaimed that "all the ports, coasts, and river mouths from the Elbe to Brest" were to be considered as under a blockade. Napoleon replied with the Continental blockade announced in the Berlin Decrees of 21st

November, 1806, and England promptly returned the compliment, declaring in the Orders in Council of 7th January and 11th November, 1807, a blockade not only over all ports and towns of France and her colonies, but also over all ports from which the British flag was excluded. The notification ran as follows:—"These ports and places will suffer the same restrictions in regard to commerce and navigation as if they were blockaded effectively by the naval forces of His Majesty." Napoleon, in the Milan Decrees of 17th December, 1807, proclaimed a blockade of the British Isles by land and sea, and directed that "any ship sailing from or to a British port should be liable to capture, and any ship of any nation which had been visited by an English ship should lose her nationality and be considered as English." In justification of this action the decree itself stated: "These measures, which are no more than a just reprisal for the iniquitous system adopted by the British Government, which takes the Barbary States as its model, will not affect any nation which is able to make the British Government respect her flag."

Great losses were suffered by England and France owing to the neutrals ceasing to trade in their ports, and the former was forced to reduce, in the Order in Council of 26th April, 1809, the general blockade to the ports of Holland, France and her colonies, and Northern Italy. Thanks to the intervention of the United States, which was sought by both parties, the Milan and Berlin Decrees were abrogated on 28th April, 1811, and the English Orders in Council on 23rd June of the following year.

It is noteworthy that no reference was made in the treaties concluded in 1815 to the principles of blockade, so that England remained faithful to her tradition of "paper blockades," while France, followed by almost all the other European nations, recognized only a blockade which had been duly notified and was effective. The Crimean War of 1854 brought both countries into agreement. In the declaration of 28th March, 1854, they announced that they would take no proceedings against neutral ships unless they violated a blockade made effective by the presence of a naval force sufficient to prevent access to the enemy's coast. This principle was confirmed later by the Declaration of Paris, the fourth article of which reads as follows:—"A blockade to be binding must be effective, that is, maintained by a force sufficient to prevent access to the enemy's coast."

In spite of this solemn declaration, accepted by every State, its provisions were adhered to by few; in fact,

England made use of a cruising blockade with a single ship at Rio de Janeiro in 1862;

Denmark used a paper blockade in the war of 1864;

Maximilian of Austria blockaded the northern Mexican ports without having sufficient ships for the task;

Turkey made use of a paper blockade in 1877 against the Russian Black Sea ports;

Chile used a paper blockade in 1889 against the Peruvian and Bolivian coasts;

The blockades of the wars of 1870, 1897, 1898, 1904 and 1912 were more or less effective, but never came up to the requirements of the Declaration of Paris in this respect.

If a blockade were to be real and effective according to the existing definition, about 20 or 25 fast and well-armed ships would be needed for each 400 or 500 miles of coast, so as to keep the command of the sea in the blockaded area, prevent the fast merchant ships of modern days from breaking through and to pursue any which might have crossed the line of blockade. It is easy to understand that a belligerent who is at war with an adversary formidable at sea will not be likely to use in the blockade ships which might be more usefully employed in other directions. It is this fact which has always led belligerents to disregard the Declaration of Paris or to put a strained interpretation upon its provisions.

The Conference of London might easily have put an end to this anomalous state of affairs, but, as we have already said, it did not take a common-sense view of the matter, and the rules of blockade drawn up by it were so impractical as greatly to hamper the blockading Power in the exercise of his rights, thus depriving him of an arm which causes but little loss of life if properly used, though it is a potent means of inducing the adversary to whom it is applied to sue for peace.

The present war has already shown that a "real and effective blockade," as defined in the Declarations of Catherine II. in 1780, of Paris in 1856, and of London in 1909, is no longer possible in face of the employment of new arms. It is not right to talk of Germany violating the law in her blockade of the English coasts by mines and submarines. The efficacy of such weapons is open to doubt, but, in our opinion, their legality is unquestioned. It must be understood that attacks on human life and innocent trade made without warning cannot be countenanced, since we maintain that this new system of blockade can be rendered effective without having recourse to the measures set forth in the German note of 4th February. Besides, the German Government has itself recognized this fact in her note sent to the United States on 16th February. In concluding her exposition of the reasons justifying her action, she declared herself to be "always ready to examine with the greatest care any measure which might help towards assuring the safety of legitimate commerce."

The new blockade differs from the old not only in the absence of surface ships on the line of blockade, but also in the method of dealing with neutral ships which venture into the blockaded area. The use of submarines in this connection cannot, *stricto jure*, be called illegal, seeing that the Hague Convention did not forbid a similar employment of mines, which are no less dangerous. Since, however, it is opposed to all principles of civilization and humanity to permit that submarines controlled by men, should become, like mines, blind instruments of destruction, we are of opinion that their employment should be regulated by definite rules. This necessity is all the more pressing as, if by any chance the German submarines do not succeed in the present instance in blockading the English coasts, it will be because they are

few and probably as yet possess an insufficient radius of action. Submarines will in time be perfected, as are all the things of this world, they will be able to act at a greater distance from their base and will become more fitted for a war of blockade. No one will deny the paramount necessity, which devolves upon us all, of safeguarding life as far as is humanly possible, and some such rules as the following might be framed to meet the situation :—

Article I.—The blockade of an enemy's coast by mines and submarines is permissible.

Article II.—Belligerents shall notify the mined areas and shall employ exclusively mines constructed in accordance with the rules of the Hague Convention.

Article III.—Ships which are shown by their papers to be knowingly violating the blockade shall be confiscated and may be destroyed.

Article IV.—Ships which are ignorant of the existence of the blockade shall be warned and turned back.

Article V.—No neutral or enemy merchant vessel may be destroyed until a reasonable time has been given to the passengers and crew to take to their boats. The captain is to see to the safety of the ship's papers.

Article VI.—A merchant ship ordered to stop by a submarine must comply instantly and send the ship's papers on board for examination.

Article VII.—Neutral ships may not be confiscated or destroyed for having previously violated the blockade. They shall be free as soon as they have left the blockaded area, unless they are followed from it by a submarine or other blockading ship. When the chase is abandoned the ship is free.

Article VIII.—The National Prize Courts in the first instance, and the International Court in case of an appeal, shall be competent to judge of the legality of the actions of the submarines.

If the belligerent Powers would agree to adopt these rules, or something to the same effect, submarine blockade would become a recognized weapon of war, and civilization and humanity would be the gainers. The action taken since the 2nd March by France and England of intercepting goods (making no distinction between what is contraband and what should go free), carried in neutral ships bound for or coming from Germany, would not have equal claims to existence.

Some such solution would be welcomed by the neutrals, who can no longer suffer their rights, confirmed after centuries of war, and set forth in Articles 2 and 3 of the Declaration of Paris, to be trampled under foot, however much the measures taken by France and England may be justified by the conduct of the German submarines.