THE TRADITIONAL NEUTRALITY POLICY OF THE UNITED STATES AND FREEDOM OF THE SEAS

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By

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P R E F A C E

During the past decade some Americans have placed an unusual amount of faith in the principles of neutrality. After the experiences of the World War many have said "never again, will we enter another European War." Let war come in Europe if it must; the United States would be neutral. This policy was said to have a sound national tradition behind it. Some of the isolationists had so much faith in the law of neutrality that all a neutral state had to do was to fulfill faithfully its duties of neutrality and it could rest assured that its rights would be respected and it could remain at peace while the belligerents fought out their battles on another continent. The isolationists further argued that whenever the United States had departed from its traditional policy of neutrality as laid down by Washington and Jefferson it had done so at its own misfortune. Some people held to the opinion that the United States should surrender neutral rights to prevent the irritating contacts with beligerent nations that finally led to war. Their opinion was that if the United States intends to remain at peace it must make sacrifices.

There are those in the United States who have favored complete participation of the United States in a policy of international cooperation to maintain world peace. The United States is confronted with the problem of changing its neutrality policy to a more realistic one. Is it possible for the United States as a large nation to be a neutral observer to foreign conflicts? Can America continue to treat the law breaker and his victim alike? United States traditional neutrality is

based on the principle that a neutral is expected to treat both sides in a conflict alike and to refrain from taking sides. In recent times the principle of Grotius that a neutral must make a distinction between just and unjust wars and to take sides against the "aggressor" has found many adherents among the American people. During the last war the Allies expected every state to take punitive measures against an "aggressor". The mandate has become more pressing than ever for the United States to join with the rest of the peace loving nations to enforce peace.

This study has traced the history of neutrality from the time of its inception, through its youthful struggles, up into the severe trials of its maturity. The trend from isolationism to international cooperation is evident. Its purpose was to trace this trend and to discover if possible the reason for the apparent breakdown in the neutrality policy of the United States in 1917; the similarity, if any, between the causes of the entaglements in the Napolennic Wars and the World War; and whether international law kept pace with scientific developments and modern means of warfare.

The plan of organization followed in the analysis of this problem was to develop each topic to its logical conclusion instead of strictly adhering to a chronological progression of events. Although, as much as possible, events have been discussed in a chronological order, I am particularly grateful to those who have so ably assisted me in giving many helpful criticisms in the preparation of this work.

A. E.

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Chapter One

HISTORICAL DEVELOPMENT OF TRADITIONAL NEUTRALITY AND NEUTRAL DUTIES

The precise meaning of the term "neutrality" has been variously interpreted by individuals, depending upon each one's social background and experience. To the average American citizen neutrality means "to mind one's own business" or an attitude of impartiality toward belligerent states which avoids dispute or conflict and tries to maintain the friendship of nations at war.[1] When the average man speaks of neutrality he often confuses it with partiality. Of course, a greater mistake could hardly be made. Effective neutrality does not mean effective impartiality. It may mean just the opposite. If the war involves a great sea power which has control of the sea, it may mean that by remaining neutral a nation is in effect taking sides with that power against its opponents who do not control the sea.[2]

Many people think that the doctrine of neutrality means that the United States must isolate itself from the nations at war. On the contrary, traditional neutrality involves taking active steps to protect its trade with both belligerent groups. When the great mass of the American people wish to remain neutral, speaking with exactness they do not mean that at all, but they mean that they wish to keep out of war, which is a very different thing.[3]

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1 Theodore N. Vander Lyn, "Is America Neutral"?, American Society of International Law, Proceedings, (1917), XI, 144.

2 Henry L. Stimson, "Neutrality and War Prevention", ibid., (1935), XXIX, 121.

3 Ibid.

To the legal mind neutrality signifies absolute impartiality in all dealings with the belligerent countries. The international lawyer defines neutrality as:

> ....the legal status arising from the abstention of a state from all participation in war between other states, the maintenance by it of an attitude of impartiality in its dealings with the belligerent states, and the recognition by the latter of this abstention and impartiality. From this legal status arise the rights and duties of neutrals and belligerent states respectively.[4]

International law recognizes that, in time of war, nations which want to, have a right to remain aloof from the conflict. When therefore a state decides not to take sides, it acquires the right to have its position of neutrality respected by the belligerents. On the other hand, belligerents have the right to hold a neutral to the observance of its position as a neutral not to take sides in the conflict. Neutrality is not a "do nothing" policy which ignores a conflict but rather an active status, under which a neutral state seeks, by positive and definite measures, to discharge its obligations and to preserve and maintain its neutral rights. As a rule it is only a neutral state that will insist upon observance of its neutral rights. A belligerent will either try to hold a neutral to its status of neutrality or violate its rights as a neutral. In practically every war that the United States has taken part, it has "waged neutrality" preliminary to its real entrance into the conflict.

To the politician and statesman neutrality is a technical term in internation law used:

> ....to describe the status of countries announcing that they will not participate in a war which has been declared between two or more belligerents, and that they will claim

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4 Herbert W. Briggs and Raymond L. Buell, "American Neutrality in a Future War", Foreign Policy Association Reports, (1935), XI, 26.

rights and fulfill duties prescribed by international law for neutrals.[5]

In non-technical language this would mean the entire cessation of communication, transportation, and trade between neutrals and belligerents as soon as war broke out. The Stimson doctrine already mentioned maintains that such a status would not necessarily be impartial. A neutral withholding its trade from all belligerents may be to the decided advantage of one party and a disadvantage to the other. Therefore, a fair and impartial neutrality would imply carrying on trade in time of war, subject to international law.

The story of American neutrality is the story of a nation that has tried to live its own life in peace in the midst of lawlessness and anarchy. In its early history the American nation proclaimed a policy of political isolation, but it saw no reason for adopting a similar policy of commercial isolation. The present world crisis has brought the United States face to face with a very important issue. Shall it continue to adhere to a policy of political isolation, that considers, or is alleged to consider, the cause of all belligerents as just, or shall it abandon its traditional policy of "waging neutrality" and assist those who are fighting the "aggressors". The "freedom of the seas", that is, the defense of neutral rights of intercourse and trade is at stake in a world of totalitarian powers.

To understand the real motives underlying the policy of neutrality that the American people have maintained since they were admitted into

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5 Julia E. Johnson, Comp., The Neutrality Policy of the United States, 73.

the family of nations, and the issues that face it now, it would seem desirable to recall the facts of the history of American neutrality. The history of neutrality has been a long struggle for national independence and freedom. The principles of neutrality have arisen out of a long historic struggle between belligerents and neutrals over the rights of trade.

The law of neutrality is one of the comparatively recent developments of international law. The modern international legal system is based on the theory of the co-existence of equal nations, each enjoying a wide freedom of action known as sovereignty, but each subject to international law. According to international law a government that:

> ....confesses itself unable or unwilling to conform to those international obligations which must exist between established governments of friendly states it would thereby confess that it is not entitled to be regarded or recognized as a sovereign and independent power.[6]

The fundamental principle of international law that states are equal before the law implies that all states may, when they consider their rights violated, appeal to such redress as international law affords. In principle, sanctions of international law hold good for the protection of the weak as well as the strong. But here international law has proved itself unable to translate a principle of law into a concrete rule of conduct.

Prior to the treaty of Westphalia in 1648, the smaller states of Germany existed only by the sufferance of the larger. As long as autocratic sovereigns required that their neighbors should be either friendly allies or open enemies neutrality was impossible. All who were not friends were considered as foes; there was no middle ground a

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6 John Bassett Moore, Digest of International Law, I, 6.

state might assume. The idea of a family of equal nations and the theory of a balance of power in Europe have made the law of neutrality a reality in the law of nations. It is generally conceded that international law dates from the year 1648, with its great international gatherings at Osnabruck and Munster, the Peace of Westphalia ending the Thirty Years' War, where states, Catholic and Protestant, absolute and limited monarchies, met on supposedly equal terms. Before this time, during the Holy Roman Empire, Popes and Emperors did not recognize that they were equals. Until this time one world power succeeded another. International law then is a collection of principles and customs which the civilized world has come to accept as a sound basis for the relations of responsible nations with one another. It is not an arbitrary rule of a superior nation but rather the response of equal nations to regulate their dealings with one another.[7]

The concept that neutrals have certain duties to perform was recognized long before international law in its present sense developed. In ancient Greece full recognition was given to the principle that when two kings were at war a third might remain at peace. There was an admission that a "neutral" king might continue his commerce, but might not furnish to one belligerent supplies useful in war. In the old Greek world it was maintained that a state must not only refrain from actively assisting one belligerent, but must not grant within its territory favors to one which it denies to the other. It was considered,

> ....a violation of the rights of neutral states to interfere with their peaceful commercial intercourse, either by sea or land, or to take forcible possession of their goods while passing through their dominions; it was held a

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7 Philip C. Jessup, "Historical Development of the Law of Neutrality", World Peace Foundation Pamphlets, (1928), XI, 355.

> breach of neutrality on the part of a third state not in alliance with the belligerents to assist either by sending auxiliaries or permitting the enrollment of forces, to betray their maneuvers, to allow armed troops of the combatants to pass over their territory, to permit the planning of naval operations in their territorial waters, to shelter or to aid the fleet in their ports and harbors beyond what was reasonably necessary for the effecting of a safe departure.[8]

During the Middle Ages in Rome, however, the situation was different and very little trace is found of the law of neutrality by the student of international law. The reason may be the dominance of the Church over political affairs.

As early as the beginning of the sixteenth century, off-setting treaties were made for friendship or alliance in which there usually was an agreement not to render aid to an enemy or even to prevent subjects from doing so. Conflicting with this principle there were treaties made guaranteeing a belligerent freedom in recruiting aid in "neutral territory". A typical treaty is that of 1656 between England and Sweden.

As time went on a single principle was slowly evolving, namely, that a neutral should not involve itself in any way in a war. At least down to the nineteenth century it was believed that aid to the enemy was excused if it were rendered in fulfillment of a prior treaty obligation. Thomas Jefferson stated to Morris, then minister to France, on August 16, 1793, that the law of nations required a neutral "that no succor should be given to either (belligerent), unless stipulated by treaty".[9]

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8 Charles Phillipson, The International Law and Customs of Ancient Greece and Rome, II, 303.

9 Moore, op. cit., VI, 830.

Grotius in the seventeenth century originated a strange kind of neutrality whereby a state should do nothing to strengthen a belligerent whose cause was "unjust" or hinder a belligerent whose cause was "just". This concept has reappeared in very recent times under the guise of "sanctions" and other coercive measures denoted as "measures short of war". Quoting from a translation of De Jure Belli et Pacis, the great Hollander's book, which first appeared in 1625, his doctrine is this:

> It is the duty of those who stand apart from war to do nothing which may strengthen the side whose cause is unjust, or which may hinder the movements of him who is carrying on a just war; and in a doubtful case to act alike to both sides, in permitting transit, in supplying provisions to the respective forces, and in not assisting persons besieged.[10]

During the seventeenth century it was practically impossible for a nation to remain neutral at the outbreak of a conflict because the legal right to remain neutral was not established as an international law. The danger of being compelled to fight anyway persuaded Grotius to suggest a distinction between just and unjust wars. Neutrals were advised to help the just, but when a distinction was impossible, to treat both sides alike. To survive, a neutral was invited to pick the winning side. That in effect is the advice enjoined upon neutrals by the modern proposal to take sides against the "aggressor". A neutral at the present time is left the freedom to determine which of the belligerents is prosecuting a just war, and as a result of this decision to take the side of the nation whose cause it considers just.

The eighteenth century witnessed a striking development of the theory of the duties of a neutral. In 1737 Bynkershoek brought out his

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10 Jessup, op. cit., (1928), XI, 359.

Quaestiones Juris Publici, in which he declared:

> I call those non-enemies who are of neither party in a war, and who owe nothing by treaty to one side or the other. If they are under any such obligation they are not mere friends but allies....If I am neutral, I can not advantage one party lest I injure the other....The enemies of our friends may be looked at in two lights, either as our friends, or as the enemies of our friends. If they are regarded as our friends, we are right in helping them with our council, our resources, our arms and everything which is of avail in war. But in so far as they are the enemies of our friends, we are barred from such conduct because by it we should give preference to one party over the other, inconsistent with that equality in friendship which is above all things to be studied. It is more essential to remain in amity with both than to favor the hostilities of one at the cost of a tacit renunciation of the friendship of the other.[11]

The appearance of the United States upon the international stage was one of the most significant events in the development of the law of neutrality. The geographical detachment of the United States from Europe has made it possible for her to make a distinctive contribution to the law of nations. She has been able to remain aloof from European alliances and avoid entering the conflicts of the continent. Furthermore, the United States very rapidly became a maritime commercial power, and became vitally interested in the privileges of neutrality when the European states were at war. The leaders of the young republic fully realized that if they were drawn into European conflicts on the side of one or the other of the belligerents, their independence would be endangered.

The French Revolution was the first European conflict to test American policies. On April 8, 1793, Citizen Genet landed at Charles-

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11 Ibid., (1928), XI, 360.

ton, South Carolina, as minister from France to the United States. He immediately entered upon a campaign to enlist the sympathies of the Americans for the French cause. He had brought with him blank commissions for privateers, and he lost no time in seeing that several such vessels were outfitted and ready for sea. When enroute to Philadelphia, Genet found constant occasion to stir up the people to hostility against England. President Washington felt constrained, in spite of the legal and moral obligations to France according to the alliance of 1778, to place the United States in an attitude of strict neutrality in the war between England and France. President Washington's proclamation of neutrality on April 22, 1793, forms a landmark in the development of international law. Since it has been the foundation of the traditional neutrality policy of the United States, part of it is quoted here:

> ...the duty and interest of the United States requires that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers:
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> I have therefore thought it fit...to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.
>
> And I do hereby also make known that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the powers at war, or any of them.[12]

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12 American State Papers, Foreign Relations, I, 140.

Encouraged by tumultuous overtures on his way to the capital Citizen Genet continued his activities in the United States. French prize courts were set up, and British prizes were brought into American ports; captures were made within the three-mile limit of American waters and a constant stream of privateers sailed out from the United States under French commissions. Genet defended these activities partly on the basis of international law and partly under the Franco-American treaty of 1778. It was Thomas Jefferson, Secretary of State, who so ably outlined our theory of neutrality in two brief statements taken from his diplomatic correspondence with the French Government. If the United States, he said in writing to Mr. Morris, Minister to France,

> ....have a right to refuse the permission to arm vessels and raise men within their ports and territories, they are bound by laws of neutrality to exercise that right and to prohibit such armaments and enlistments.[13]

Again in writing to Citizen Genet he tersely summarized his position by saying that it was

> ....the <u>right</u> of every nation to prohibit acts of sovereignty from being exercised by every other within its limits, and the <u>duty</u> of a neutral nation to prohibit such as would injure one of the warring parties.[14]

The United States Government demanded the recall of Genet in 1793 and began to enforce the duties of a neutral nation. Ever since the United States became a member of the Family of Nations it has played a leading role in the enforcement of "neutral rights" as described by international law. On August 4, 1795, Alexander Hamilton, as Secretary of the Treasury, issued instructions to collectors of the customs, advising

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13 <u>Ibid</u>., 167.

14 <u>Ibid</u>., 150.

them of their duties in detecting and preventing violations of the laws of neutrality. These instructions seem to have been entirely successful, since there is no evidence that vessels of this type were outfitted in American ports after August 7, (1793).[15]

On March 24, 1794, Washington issued his second neutrality proclamation, in which he specifically mentions the acts of enlisting others or enrolling one's self in hostile expeditions as being contrary to the duties of neutrality under the law of nations. This was followed on June 5 by the passage of the first neutrality law. The law prohibited the following acts: (1) the acceptance within the United States by citizens thereof of commissions to serve a foreign power; (2) the enlistment or securing the enlistment of other persons within the United States; (3) the fitting out or arming within ports of the United States, of vessels intended to aid a foreign power engaged in war against another state with which the United States was at peace, together with the delivery of any commission to such a vessel; (4) the increasing or augmenting of the force or armament of any ship under like circumstances; (5) the launching on American territory of any military expedition against a foreign country with which the United States was at peace. The rest of the act put "teeth" into these prohibitions. The final provisions of the act conferred jurisdiction on the district courts to deal with cases of captures made within the territorial waters of the United States; further, they authorized the President to use the land and naval forces of the United

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15 Charles George Fenwick, The Neutrality Laws of the United States, 23.

States to enforce the prohibitions contained in the act; and finally they conferred similar powers upon the President to compel the departure from the United States of any foreign vessel which under the law of nations ought not to remain within American territory.[16] The United States Government made a distinction in the law of neutrality between acts which a neutral government tried to prevent and those in regard to which it merely withheld its protection. In the first category were included the outfitting of vessels; the enlisting of forces; and the setting on foot of hostile expeditions. All these the neutral government were bound to prevent, and for breaches of this duty the American Government acknowledged its liability to pay damages. The United States paid to the British Government the sum of $143,428.11 for the claims of British subjects injured by depradations of the French privateers in 1793. The acknowledgment of this obligation by the United States Government unquestionably paved the way for the Alabama claims against Great Britain after the Civil War.

In the second group were included the acts of individuals in carrying contraband goods or in running a blockade. The act itself was unlawful but the violator was apprehended by a belligerent. As John Bassett Moore has pointed out, the trade in contraband cannot be said to be lawful since its conduct is attended with severe penalties. The unlawful act is punished not by the neutral nation but by the belligerent whose cruiser may interrupt the venture.[17] This principle is well

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16 United States Statutes at Large, I, 381.

17 Moore, op. cit., VII, 955.

stated by Jefferson in writing to Hammond, the British minister in Washington, on May 15, 1793, when he declared:

> Our citizens have been always free to make, vend and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistance, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal disarrangement of their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portions of these arms as shall fall into the hands of any of the belligerent powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned, and even private conventions may work no equality between the parties at war, the benefit of them will be left equally free and open to all.[18]

Hall, the well-known English authority on international law, says of the attitude of Washington's administration:

> The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were, and in some respects it even went further than authoritative international custom has up to the present time advanced. In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations.[19]

Washington's proclamation of neutrality created a profound impression in Europe; for it was at least novel that a people which had heretofore been involved in practically every European war to which England, France or Spain had been parties should now assert their com-

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18 Ibid.

19 William E. Hall, A Treatise on International Law, 7th ed. (1917), 632.

plete independence of European quarrels. Yet it was a logical step in the policy of non-intervention in European affairs, a principle which was later expressed in the Monroe Doctrine, and forshadowed Washington's Farewell Address which definitely made non-intervention a cornerstone of American foreign policy.

President Madison, September 1, 1815, issued a proclamation which amounted to neutrality. Incidentally, it was a recognition of the revolted Spanish colonies in America. A commission was sent to Buenos Aires in 1817 to investigate the situation of the revolting provinces but instead the agents participated in widespread violations of United States neutrality. This was due to the defectiveness of the old neutrality law of 1794 which had not prohibited American citizens from accepting commissions from a foreign prince or state for service outside the United States and then selling it to a foreigner to be used outside the United States contrary to law. Nor did it provide adequate machinery for executing the law by the seizure of ships suspected of being fitted out for hostilities against a friendly power.

On March 17, 1817, a new law was passed forbidding unneutral conduct against any "foreign prince, state, colony, district or people" with whom the United States was at peace. Subsequently, Congress passed the Foreign Enlistment Act of April 20, 1818, which served as a model for British legislation, and exerted a decisive influence in the formulation and evolution of the modern law of neutrality. The basic provision of the act was:

> Every person, who within the jurisdiction of the United States, begins or sets on foot, or provides, or prepares the means for, any military expedition or enterprize to be carried on from thence against the territory or domains of any foreign prince or state, or of any

> colony, district or people, with whom the United States are at peace, shall be deemed guilty of a misdemeanor, and shall be fined not exceeding three thousand dollars and imprisoned not more than three years.[20]

The President's proclamation of neutrality of 1815 and the neutrality acts of 1817 and 1818 were considered as reasonable assurances of policy to Spain that the United States would not assist the revolted colonies. These promises practically assured the success of the important negotiations between Adams and Onis over the Florida question. The neutrality laws of the United States as amended in 1817 and 1818, had nothing in them to prevent military service of an American citizen with a foreign prince or people outside the territory of the United States. Nor do they to this day. But the laws of the United States have never sanctioned foreign recruiting within its boundaries. When Great Britain tried that during the Crimean War, the United States broke it up immediately and insisted on the recall of the British minister and consuls for their improper activities. The policy of the younger statesmen was not to antagonize a nation with whom the United States was at peace. In fulfillment of the duties of neutrality the United States Government in the past has always insisted that belligerent nations should respect her rights as a neutral. Her basic desire has been to remain at peace with the nations of the world.

The next great landmark in international law came as a result of the Civil War. The noted Confederate cruiser Alabama and other vessels were outfitted in Great Britain and allowed to leave the country to prey upon American commerce. The United States insisted that under the

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20 United States Statutes at Large, III, 449.

then existing rules of international law Great Britain was under an obligation to see that vessels were not fitted out in her ports for service under one of the belligerent flags. In other words, the American Government contended that its own neutrality statutes, which in their origin had presented a distinct advance upon prior rules of neutrality, had by the middle of the nineteenth century become established as expressive of the law of nations. Although Great Britain was unwilling to recognize this principle, Her Majesty's Government did sign the Treaty of Washington of May 8, 1871, whereby she agreed to the famous Three Rules of international law set up by this convention. The celebrated rules contained in Article Six have been regarded as a landmark in the recognition of the duties of a neutral. A neutral Government is bound:

> First, to use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted in whole or in part, within such jurisdiction, to warlike use.
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> Secondly, not to permit or suffer either belligerent to make use of its ports or waters as a base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.
>
> Thirdly, to exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.[21]

These principles received international approval at the Second Hague Conference of 1907. Instead of requiring neutrals, however, to

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21 William M. Malloy, Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and Other Powers, I, 703.

exercise "due diligence" the Hague Convention demands that it "employ the means at its disposal" to enforce the rules.[22]

In 1907 there still remained the distinction already alluded to, between those acts which a neutral government was bound to prevent and those which it might permit its citizens to do. Article Seven of the Second Hague Convention, respecting the rights and duties of neutral powers and persons in case of war on land and the same article in the convention concerning the rights and duties of neutral powers and persons in naval war, both recognize expressly that

> ...a neutral power is not bound to prevent the export or transit for the use of either belligerent, of arms, ammunition, or in general of anything which could be of use to any army or fleet.[23]

When in 1914 England was a belligerent and the United States a neutral the British Government admitted that the famous Rules of Washington of 1871 "may be said to have acquired the force of generally recognized rules of international law".[24] Thus, at the beginning of the World War there existed definite rules of international law which were recognized as imposing on neutrals definite duties of abstaining from any action which would assist either party to the conflict. A neutral state was not deemed to be under an obligation to prevent its citizens from trading in war materials, though such conduct might result in subjecting the individual to punishment. This aspect of the law of neutrality is due in part to the parallel growth of a law of

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22 Ibid., II, 2358.

23 Ibid., 2290, 2352.

24 British Charge to the Secretary of State, August 4, 1914, Department of State, Diplomatic Correspondence between the United States and Belligerent Governments Relating to Neutral Rights and Duties, European War, No. 3, 37.

"neutral rights" which in part at least owed its final development to the co-existence of a law of "neutral duties".

A significant contribution to the development of the law of neutrality was made by the United States under Washington and Jefferson. The United States insisted that belligerents should respect its neutral rights in return for its fulfillment of the duties of neutrality. To preserve the principles fought for during the American Revolution the statesmen of the young American republic thought it wise to remain aloof from European conflicts. It was a policy of "political isolation".

The growing importance of international trade caused the young American nation to assert its right to trade during war as well as peace time. The American contention was, if belligerents had rights, so had neutrals. The rights of neutrals, discussed in the following chapter, have contributed to the economic growth of the United States. In the development of "neutral rights" the United States usually was one step ahead of the other members in the family of nations.

Chapter Two

DEVELOPMENT OF "NEUTRAL RIGHTS"

"Neutral rights" are based on the basic right of a free and independent nation to remain at peace with other nations and to take no part in an armed conflict between belligerents, either in an international or in a civil war.[1] While recognizing that the exigencies of modern warfare entail considerable restrictions on a normal intercourse of neutrals in time of peace, the United States has always insisted on the right of American citizens to trade and maintain friendly relationships with the peoples of other nations in time of war. Until the present time the United States has vigorously upheld the "freedom of the seas" and denied the right of belligerents to restrict that freedom other than as was recognized by military necessity. The denial of the freedom of the seas by Germany was the primary reason for the entry of the United States in the World War in 1914-18.

The rights of neutrals at sea have come to play a more important role than those on land. This has been especially true since the United States entered the international family and assumed a leading role as a neutral. During wartime nations at peace have insisted that their trade and intercourse with belligerents continue unhampered and nations at war have sought to curtail the enemy's trade by blockades and the rights of visit and search. Private citizens and corporations in the United States, until recent times, have considered it their privilege and right to carry on trade with a country at war, except when effectively

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1 Secretary of State Cordell Hull to Senator Pittman and Representative Bloom, May 27, 1939, American Journal of International Law, XXXIII, 726.

blockaded. In the absence of a blockade belligerent warships have considered it their right to halt, visit or search neutral merchantmen and confiscate goods regarded as contraband.[2]

John Bassett Moore has pointed out that the keynote to the question of neutral rights is to be found in the doctrine of contraband. Around this point cluster the doctrines of "free ships, free goods," the law of blockade and the other principles of international law.

> A neutral state is not bound by the law of nations to impede or diminish its own trade by municipal restrictions. A neutral merchant may ship goods prohibited jure belli, and they may be rightfully seized and condemned. It is one of the cases where two 'conflicting rights' exist which either party may exercise without charging the other with wrongdoing. As the transport is not prohibited by the laws of the neutral sovereign, his subjects may lawfully be concerned in it, and as the right of war lawfully authorizes a belligerent power to seize and condemn the goods, he may lawfully do it.[3]

Whatever is not prohibited by the positive law of a country is lawful. Although the law of nations is part of the municipal law of England, and it may be said that by that law contraband trade is prohibited to neutrals, and consequently unlawful, yet the law of nations does not declare the trade to be unlawful. It only authorizes the seizure of contraband articles by the belligerent powers. The past history of the nations of the world has revealed a constant struggle between the conflicting claims of neutrals and belligerents. The rules that have been evolved are the results of compromises agreed to for neutral advantage.

The first important bit of evidence upon the question of the extent of the rights of neutrals to trade in time of war is found in the Consolato del mare, which was first published in Barcelona in 1494. This

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2 David H. Popper, "American Neutrality and Maritime Rights," Foreign Policy Association Reports, XV, 242.

3 Moore, op. cit., VII, 975.

ancient compilation of maritime precedents seems to have been a record of the customs and usages which the Mediterranean nations observed and considered to have the force of law. Briefly, it laid down the principle that a nation might seize the goods of an enemy which he found on board the ships of a friendly state, but the ship itself should go free. Furthermore, the neutral was entitled to receive from the captor the freight which he would have earned on goods had they been delivered to their destination. Reciprocally, neutral goods were not subject to confiscation even though they were carried in enemy bottoms, but in such situation it was the captor who received the freight.[4] In other words, the controlling principle was that the disposition of the goods depended upon the ownership and was not affected by the character of the vessel in which they were carried.

This principle seems to have been generally accepted throughout Europe for a long period. The acceptance of a different rule is found in the famous treaty of the Pyrenees in 1659, which terminated the war between the then great maritime powers of France and Spain known as the rule of "free ships, free goods", and added thereto the converse proposition of enemy ships enemy goods. This treaty also included one of the earliest lists of goods known as contraband.[5]

Throughout this period there was full recognition of the fact that a neutral may continue trade with a warring state with the exception that contraband goods may freely be captured by the other belligerent. With the exception of arms and munitions, there was at first little agreement

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4 "Consolato del Mare," World Peace Foundation Pamphlets, XI, (1928), Appendix I, 462.

5 "Peace of the Pyrenees between France and Spain, November 7, 1659", ibid., 465.

upon what goods might properly be denominated contraband. Gradually the categories were extended to include such things as horses, money and various ship supplies, but in regard to none of these was unanimity achieved.

Grotius in 1625 clearly laid down the basic rule for contraband which has been followed almost ever since. He declared that:

> ...there are some articles of supply which are useful in war only, as arms; others which are of no use in war, but are only luxuries; others which are useful both in war and out of war, as money, provisions, ships and their furniture.[6]

The first category was always subject to capture and the second always free. It is obvious that the third category, which later became known as "conditional contraband" afforded ample opportunity for disargeement.

The next great landmark in the field of "neutral rights" were the armed neutralities of 1780 and 1800 in which the neutral countries of Europe organized to defend their rights against belligerents, if necessary, by the force of arms. The first armed neutrality of 1780 sprung from no enlarged and beneficient views of improvement in the maritime law to nations hitherto sanctioned by general practice. It was rivalry between two candidates for the favor of a dissolute, ambitious and vainglorious woman. The declaration was issued by Catherine II of Russia on February 28, 1780, and laid down the following principles:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

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6 Jessup, op. cit., 572.

(3) That, as to the specifications of the above-mentioned merchandise, the Empress holds to what is enumerated in the 10th and 11th articles of her treaty of commerce with Great Britain, extending her obligations to all powers at war.

(4) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

(5) That these principles shall serve as a rule for proceedings and judgments as to the legality of prizes.[7]

Spain and France admitted the propriety of the Russian contentions and the neutral powers of Denmark and Sweden notified to the belligerents their concurrence in the Russian declaration. On April 7, 1781, the United States followed suit and was in turn succeeded in the same action by Prussia, Austria, Portugal and the Kingdom of the Two Sicilies. The cause of neutral rights could scarcely have obtained more vigorous support. The neutral powers were united to defend the rules of neutrality--that they might trade in war as in peace, except in contraband or in blockaded ports; that free ships make free goods; that blockades should be effective in order to be binding; and that these principles should be applied in prize courts. In December, 1800, Denmark, Sweden and Prussia united with Russia in the Second Armed Neutrality, which reaffirmed the four principles of the first and added a fifth article dealing with the question of convoy, a subject at that time of great importance to Denmark in its conflict with England. When, however, all of Europe became involved in the warfare centering around Napoleon, the United States was

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7 "First Armed Neutrality--Declaration of Empress Catherine of Russia, of February 28, 1780," World Peace Foundation Pamphlets, XI, (1928), Appendix I, 464.

left as almost the sole defender of the privileges of neutral rights on the high seas and has led the struggle ever since.

Under the rule of colonial monopoly that universally prevailed in the eighteenth century the trade with colonial possessions was exclusively confined to vessels of the home country. In 1756 the French, being by reason of England's Maritime supremacy unable to carry on trade with their colonies in their own bottoms, and being thus deprived of colonial succor, issued licenses to Dutch vessels to take up and carry on the prostrate trade. Thereupon the British Government announced to the Government of the Netherlands that it would in the future enforce the rule that: "neutrals would not be permitted to engage in time of war in a trade from which they were excluded in time of peace."[8] This rule, enforced by the British prize courts, has since been known as "the rule of the war of 1756." It was against it that the first article of the Armed Neutrality of 1780 was issued by the Empress of Russia affirming the right of neutrals to trade from port to port on the coasts of the powers at war.

In the wars growing out of the French Revolution, in which the rule was revived, American vessels, which had then come upon the seas as neutral carriers, sought to avoid its application by first bringing the cargo to the United States and thence carrying it on to its European or colonial destination as the case might be. To thwart this mode of prosecuting the trade, Sir William Scott applied what was called the doctrine of continuous voyage. The United States shippers tried to evade the rule by stopping at a neutral port and seeming to pay duties, and

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8 Moore, op. cit., VII, 383.

then, after landing and reloading the cargoes, carried them to the mother country of the colony. The motive of this was, that if the goods in question were bona fide imported from the neutral country, the transaction was a regular one not to be interfered with by a belligerent. The British prize courts held that if an original intention could be proved of carrying the goods from the colony to the mother country, the proceedings in the neutral territory, even if they amounted to landing goods and paying duties, could not overcome the evidence of such intention; the voyage was really a continued one artfully interrupted, and the penalities of the law had to take effect. Evidence of original intention and destination was the turning point in such cases.[9]

To this novel doctrine of continuous voyage as developed by Great Britain, Madison, the United States Secretary of State, made the following reply to the United States Ambassador in London on April 12, 1805:

> 1. It is maintained by no other nation but Great Britain... assumed by her under the auspices of a maritime ascendency,...a principle subservient to her particular interests.
>
> 2. That the principle is manifestly contrary to the general interest of commercial nations, as well as to the law of nations settled by the most approved authorities, which recognize no restraints on the trade of nations not at war, with nations at war, other than that it shall be impartial between the latter, that it shall not extend to certain military articles, nor to the transportation of persons in military service, nor to places actually blockaded or beseiged.[10]

On these grounds the United States regarded the British captures and condemnations of neutral trade with colonies of the enemies of Great Britain

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9 Ibid., VII, 383.

10 Francis Wharton, A Digest of International Law of the United States, III, 497.

as violations of rights and asked Britain to repair the wrongs.[11]

Closely connected with the doctrine of contraband is the belligerent right of blockade. The idea of blockade arose from that of seige. Originally the idea prevailed that the place must be invested both by land and by sea as a part of a distinctly military operation. As recently as 1800, John Marshall, as Secretary of State, declared that, "If we examine the reasoning on which is founded the right to intercept and confiscate supplies designed for a blockaded town, it will be difficult to resist the conviction that its extension to towns invested by sea, only, is an unjustifiable encroachment on the rights of neutrals."[12] Yet Marshall was forced to admit that the departure from principle had received some sanction from practice. By that time it was already recognized that a naval blockade instituted solely for the purpose of cutting off supplies and apart from other military operations was justifiable and proper. The First and Second Armed Neutralities of 1780 and 1800 had freely recognized the right of blockade, insisting only that it should be enforced by a sufficient naval force to make approach to the blockaded place dangerous. This last requirement is an enunciation of the principle later developed that blockades "to be binding, must be effective."

This idea of effectiveness was later accepted as the essential element of the whole concept of blockade. This question came up when the British Minister (King) replied to (Marshall) the Secretary of State,

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11 American State Papers, Foreign Relations, III, 101.

12 Moore, op. cit., VII, 781.

September 18, 1800 that an occasional absence of a fleet from a blockaded port ought not to change the state of the place.[13] According to John Bassett Moore,

> Ports not effectually blockaded by a force capable of completely investing them, have yet been declared in a state of blockade....If the effectiveness of the blockade be dispensed with, then every port of the belligerent powers may at all times be declared in that state, and the commerce of neutrals be therefore subjected to universal capture. But if this principle be strictly adhered to, the capacity to blockade will be limited by the naval force of the belligerent, and of consequence, the mischief to neutral commerce cannot be very extensive. It is, therefore of last importance to neutrals that this principle be maintained unimpaired.[14]

During the Napoleonic Wars the opposing belligerents, England and France, by mere decrees proclaimed the whole coast of the enemy in a state of blockade without being able to defend its ports. They also asserted the general right to capture any ship bound for the enemy and in this way destroyed the right of neutrals to trade. Neutrals therefore insisted that a belligerent must in declaring a blockade, actually employ sufficient vessels to make ingress to or egress from the port dangerous. According to international law neutrals have been granted the right to question the existence of a blockade and challenge the legal authority of the party which has undertaken to establish it.[15]

During the Napoleonic Wars, France and Great Britain swept aside all restraints to the rule of blockade and gave a complete illustration of "paper blockades".

> Ports were proclaimed in a state of blockade previous to any force at them, were considered in that state without regard

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13 Ibid., 788.

14 Ibid.

15 Ibid., 782.

> to intermissions in the presence of the blockading force, and the proclamation left in operation after its final departure; the British cruisers during the whole time seizing every vessel bound to such ports, at whatever distance from them, and the British prize courts pronouncing condemnations wherever a knowledge of the proclamation at the time of sailing could be presumed, although it might afterward be known that no real blockade existed. The whole scene was a perfect mockery in which fact was sacrificed to form and right to power and plunder. The United States were among the greatest sufferers; and would have been still more so, if redress for some of the spoliations proceeding from this source had not fallen within the provisions of an article in the treaty of 1794.[16]

By Orders in Council of April 8 and May 16, 1806, the British Government declared a blockade of the whole continental coast from the mouth of the Elbe to the port of Brest. Napoleon countered with his Berlin decree of November 12, which declared the whole of the British Isles under blockade; commerce and communication were prohibited. In the following January and November, further British Orders in Council forbade all neutral vessels to trade with ports controlled by France and even with neutral ports which excluded British vessels, unless the neutral ship cleared from a British port under special regulations. The climax was reached when Napoleon's Milan decree of December 17, 1807, retaliated with the declaration that every neutral ship was good prize if it submitted to British search or sailed from or to a port controlled by the British.[17]

The great struggle between England, mistress of the seas, and Napoleon, master of continental Europe was in effect a prodigious trade conflict. Neutral rights went by the board as each powerful belligerent

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16 Secretary of State, James Madison, to James Monroe, Ambassador to France, January 5, 1805, ibid., 797.

17 For the original documents see John Bassett Moore, History and Digest of the International Arbitrations to which the United States Has Been a Party, V, 4447 ff.

built up a structure of nominally "retaliatory" measures. The United States government protested to this interference with her neutral trade. President Jefferson had never thought of making war on Great Britain, who as mistress of the sea was interfering with the trade of American shippers that they claimed should go on unmolested with both belligerents. It seemed that there were only two routes left for the government of the United States to pursue either: (1) submit after protest, with an uncertain expectation that after the war the belligerents will compensate for the damages done; or (2) fight in defense of its rights.

The alternative chosen by President Jefferson, who loved peace more than war, was economic coercion. By boycotting the belligerents he would force respect for neutral rights. President Jefferson persuaded Congress in 1807 to lay an embargo preventing all vessels from leaving American ports.[18] This policy did not work for it proved to be more painful to the United States than either belligerent. The first effects of the embargo were to stimulate smuggling and practically brought the New England section to the point of secession. The Embargo Act, intended to starve the belligerents into submission, was in reality a "self-blockade" of the American ports. In 1809 the Embargo Act was supplanted by a non-intercourse act forbidding imports from France and Great Britain. This was ingeniously designed to give relief to American commerce and at the same time to continue economic coercion of the belligerents. President Madison used the non-intercourse act as a bargaining lever with France and England to bring about the repeal of the retaliatory decrees

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18 United States Statutes at Large, II, 451, 452.

against each other.

Unfortunately, this policy of economic coercion was entirely inadequate as a weapon with which to fight the wily Napoleon, who invited neutrals into continental harbors by special proclamation and then captured them. It was Macon's Bill No. 2 passed May 1, 1810 that finally led to the declaration of war against Great Britain in 1812, but it was all due to the trickery of Napoleon. This particular act declared that: (1) no British or French armed vessels were to be allowed in American waters except when forced in distress or bearing dispatches; (2) the non-intercourse act repealed and trade reopened with all the world: (3) in case either Great Britain or France should revoke or modify its edicts before March 3, 1811, so that they should cease to affect the neutral commerce of the United States, the President should proclaim the same and if the other nation should within three months do likewise, then the non-intercourse act would go into effect against the recalcitrant nation.[19] This Act thus opened up American trade with Great Britain and with France, subject to the control of the British navy. It meant to Napoleon that the United States had deserted his continental system. It was the only piece of American economic legislation which ever had any effect on him at all. To bring back the United States in line with his system he sought to persuade President Madison that the French decrees were withdrawn against it. On August 5, 1810 the French Ministry notified the American Minister in Paris, General Armstrong, that the United States Congress now having revoked the non-intercourse act:

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19 Samuel Flagg Bemis, A Diplomatic History of the United States, 154.

> ...the decrees of Berlin and Milan are revoked, and that after the 1st of November they will cease to have effect; it being understood that, in consequence of this declaration, the English shall revoke their Orders in Council, and renounce the new principles of blockade...or that the United States..., shall cause their rights to be respected by the English.[20]

The fact was that Napoleon himself did not consider the decrees repealed. The decrees could not be repealed by a mere note from the Minister of Foreign Affairs to the diplomatic representative of a foreign power. Great Britain was reluctant to accept the opinion of President Madison that they were repealed and expressed its willingness to repeal her Orders in Council if the Berlin and Milan decrees should be really repealed. But President Madison acting in haste made a public proclamation to the effect that the French decrees were repealed and Congress passed the non-intercourse act against Great Britain on March 1, 1811. It so happened that England actually repealed her Orders-in-council on the same day that the United States Congress declared war against her (June 18, 1812). But by the time the news of the retraction reached Washington, the war was well under way and there appeared to be nothing to do except blunder through to defeat or victory. The wily Napoleon came to the aid of the "war hawks" by manipulating matters so as to make it appear that England alone was restricting the American neutral right to trade with Europe. In spite of the deception of Napoleon and the blunders with which the American policy of non-intervention was coupled the war with England would have been averted had there been cable connections between Washington and London in June of 1812.

It must be said at this place that the question of neutral rights

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20 American State Papers, Foreign Relations, III, 386-387.

could not alone have caused the war of 1812. The maritime constituencies of the United States had voted against war. To the seaboard and commercial communities wartime neutral commerce under British arbitrary control, even with the standing insult of impressment, was preferable to war. But neutral rights and impressment for which President Madison and his Secretary of State, James Monroe, had at length proposed war against Great Britain served as a righteous pretext to those members of Congress who wanted war for other reasons. The "War Hawk" party of Henry Clay and other expansionists had determined that it was morally right for the United States to expand to Canada, to Florida, and the Southwest and that this general European war presented the inspired opportunity. The historian Bemis maintains that: "The War of 1812, therefore, was finally caused by a western expansionist urge rather than solely by the just grievances of neutral rights and impressment."[21]

In his message to Congress of June 1, 1812 recommending a declaration of war against England, President Madison mentioned as causes of complaint impressment, the violation of American coasts, the practice of paper blockades, and the Orders-in-Council.[22]

Impressment was the most corrosive issue ever existing between Great Britain and the United States. The British Government traditionally had insisted upon the doctrine of inalienable allegiance: Once a Britisher always a Britisher. During the wars of the French Revolution and Napoleon, the conditions of service aboard a British man-of-war were so barbarous and inhuman as to discourage decent subjects from enlisting.

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21 Bemis, op. cit., 196.

22 Moore, Digest of International Law, II, 994.

Consequently the navy had to be recruited by force with press-gangs operating on the high seas and in seaport towns. British sailors by the thousands deserted the British navy and sought service on American ships. Many of them became naturalized American citizens. As the war dragged on year after year the English navy became short of sailors. This became a vital problem for the British nation and people then depending on sea power in a battle for life or death. The press-gang therefore began to operate more freely than usual. It is estimated by the British Admiralty that during the wars 20,000 British seamen had taken service in American vessels. Before 1815 it is also estimated that a total of at least 10,000 men were forcibly taken from American merchant ships and impressed into British naval service of which only about one-tenth proved to be British subjects.[23] The British Admiralty successfully insisted on the right to stop neutral ships in British harbors and on the high seas as a means of procuring indispensably needed man power in time of great national crisis. The culmination of insults to the American flag and the enslavement of its citizens to fight naval battles for England came when in 1807 the United States warship, the Chesapeake was stopped to be searched by the British man-of-war, the Leopard for deserters. Thomas Jefferson immediately ordered all British warships in American waters to get out and stay out. The United States government admitted the right of visit and search under conditions described by the Law of Nations, but drew the line sharply at seizing men. The United States made repeated attempts to settle the impressment issue. The issue was never settled although Great Britain has ceased the practice

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23 Bemis, op. cit., 145.

since 1815.

The repeal in London of the British Orders-in-council removed at a stroke one of the principle causes of hostilities. President Madison, whose reasons for war were not those of the western War Hawks, who carried the declaration of war through Congress in 1812, was anxious for an early peace that would honor the American contentions as to maritime law and impressment. The State Department in Washington instructed Jonathan Russell, the American chargé d' affaires who remained in London, eight days after the declaration of war, to agree to an armistice, looking toward peace negotiations, on two conditions: revocation of the Orders-in-council, and abandonment of the practice of impressment. The British Secretary for Foreign Affairs, Castlereagh, refused the American offer of an armistice and made it plain that if the Government of Great Britain had revoked the Orders-in-council she could not consent to suspend the exercise of the right of impressment upon which the naval strength of the empire mainly depended. Rather than submit the United States preferred to fight on for their just rights. In 1813 the Russian Czar, Alexander I, offered mediation which was refused by Great Britain on the basis of fears that Russia supported such American conceptions of maritime law as had been incorporated in the Armed Neutralities, the last of which (1800) had been broken up by British armed force. The United States was sure to bring up these doctrines in any discussion of peace terms, and to rely on Russian support for them. When the American delegation finally met the British peace commission at Ghent, a town in Netherlands, August 8, 1814, Britain had been victorious in Europe. In North America her military position was pretty much the same as it had been at the declaration of war. The outlook was not encouraging for the United States at Ghent.

The United States insisted, at the outset, on the specific abolition of the practice of impressment as a condition of any peace. Secretary of State James Monroe wrote to the American delegation:

> If this encroachment of Great Britain is not provided against the United States have appealed to arms in vain. If your efforts to accomplish it should fail, all further negotiations will cease, and you will return without delay.[24]

Military reversals including the burning in part of the American capital in June, 1814 left the American peace commissioners with little bargaining power. Upon the suggestion of Albert Gallatin the question of impressment was omitted altogether. On the question of neutral rights the instructions reflected a traditional American attitude, never successful against British contentions: No blockade to be legal if not supported by an adequate force; compensation for spoliations under orders-in-council; definition explicitly of contraband; repudiation of the Rule of 1756 and an arrangement for neutral trading with enemy colonies. The instructions were silent on "free ships, free goods," as if it were hopeless to expect Great Britain to bow to the dictum.

The British plenipotentiaries were instructed not to yield on the "right" of impressment or any question of British maritime law and naval practice. As finally signed (December 24, 1814) the Treaty of Ghent provided for a simple cessation of hostilities on the basis of the status quo ante bellum. No mention was made of neutral rights, blockade or impressment. Had the United States appealed to arms in vain? Peace on the basis of the status quo ante bellum, which was the cause of the war, meant that the United States secured nothing for which it went to war.

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24 Ibid., 164.

neither a redress of the grievances cited by Madison as a justification for making war, nor the hoped-for annexations of Canada and Florida. Throughout the period of the Napoleonic Wars Great Britain was unwilling to give up her vital interests of self-preservation for the preservation of neutral rights. With a few exceptions, Anglo-American relations have always remained cordial since the War of Independence.

Not until recent times has the United States realized the importance of the British navy on the high seas. No doubt the British navy has helped to maintain the "balance of power" in Europe and also served as a "Chinese wall" between war-torn Europe and the countries of the western hemisphere.

After the overthrow of Napoleon, France, Russia, Prussia, and Austria formed the so-called Holy Alliance in September, 1815 for the suppression of revolutions within each other's dominions. The Spanish colonies in America having revolted, it was rumored that this alliance contemplated their subjugation, although the United States had acknowledged their independence. George Canning proposed that England and America unite to oppose such intervention. On consultation with Jefferson, Madison, John Quincy Adams and Calhoun, President Monroe in his annual message to Congress in 1823 embodied the conclusions of these deliberations in what has since been known as the Monroe Doctrine. It has become the corner-stone of the American foreign policy which had been built up from a half-century of independent dealing with foreign nations. Referring to the threatened intervention of the powers, the message declares:

> The occasion has been judged proper for asserting a principle in which the rights and interests of the United States are involved, that the American Continents, by free and independent conditions which they have assumed and maintain, are henceforth not to be considered as subjects

> for future colonization by any European power...In the wars of the European powers, in matters relating to themselves, we have never taken part, nor does it comport with our policy to do so. It is only when our rights are invaded, or seriously menaced, that we resent injuries, or make preparation for our defense...The political system of the allied powers, is essentially different...from that of America. We owe it therefore to candor, and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portions of this Hemisphere, as dangerous to our peace and safety.[25]

President Monroe at the time had no thought that he was formulating a doctrine for Americans to follow. He merely stated his opinions and attitude toward the situation then existing. The Monroe Doctrine was a bold gesture by which a young republic had warned the world that it would not tolerate any further extension of foreign political controls in the entire western hemisphere. It meant that the peoples of the entire hemisphere were to be free to develop democratic institutions; to preserve the economic advantages; and be safely insulated at the time from any danger of foreign monarchial aggression. Historical research has shown that Great Britain, with the immensity of its naval strength, was a powerful, even though usually silent, supporter of the Monroe principles.[26]

Ever since the Napoleonic Wars the United States had advocated the acceptance of the rule that free ships make free goods as a part of international law. Before 1854 the United States had made bilateral treaties with Algiers, Morocco, Prussia, Spain, Tripoli and Tunis containing this rule and in other treaties with Brazil, Central America,

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25 James D. Richardson, comp., Messages and Papers of the Presidents, II, 218.

26 Grayson Kirk, The Monroe Doctrine Today, 4.

Chile, Colombia, Ecuador, France, Guatemala, Mexico, The Netherlands, Peru, Bolivia, Salvador, Sweden and Venezuela, the same principle was announced, coupled with the corollary of enemy ships, enemy goods.[27] Great Britain, France and Russia had steadily refused to accept the principle as international law. The American position is well stated by President Pierce in his Annual Message to Congress, December 4, 1854:

> Long experience has shown that, in general, when principal powers of Europe are engaged in war the rights of neutral nations are endangered. This consideration led, in the progress of the War of Independence, to the formation of the celebrated confederacy of armed neutrality, a primary object of which was to assert the doctrine that free ships make free goods, except in case of articles contraband of war--a doctrine which from the very commencement of our national being has been a cherished idea of the statesmen of their country. At one period or another every maritime power has by some solemn treaty stipulation recognized that principle and it might have been hoped that it would come to be universally received and respected as a rule of international law. But the refusal of one power prevented this, and in the next great war which ensued--that of the French Revolution--it failed to be respected among the belligerent states of Europe... at the commencement of the existing war in Europe Great Britain and France announced their purpose to observe it from the present; not however as a recognized international right, but as a mere concession for the time being. The cooperation of these two powerful maritime nations in the interest of neutral rights appeared to me to afford an occasion inviting and justifying on the part of the United States a renewed effort to make the doctrine in question a principle of international law...Accordingly, a proposition embracing not only the rule that free ships make free goods, except contraband articles, but also the less contested one that neutral property other than contraband, though on board enemy's ships, shall be exempt from confiscation, has been submitted by this government to those of Europe and America.[28]

Practically the final state in the controversy over the principle of free ships, free goods, came with the Declaration of Paris in 1856, at the close of the Crimean War. To avoid the deplorable disputes of

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27 Moore, op. cit., VII, 434-436.

28 Richardson, op. cit., II, 2808.

maritime law, in time of war, between neutrals and belligerents, the nations assembled in a Congress at Paris thought it advantageous to establish a uniform doctrine on so important a point and adopted the following declaration:

1. Privateering is, and remains abolished.

2. The neutral flag covers enemy's goods, with the exception of contraband of war.

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;

4. Blockades in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.[29]

The signatories of this declaration thus finally put their stamp of approval upon the rule of free ships, free goods, but made still greater concessions to the neutral by declining to follow the correlative rule of enemy ships, enemy goods. Although the Declaration of Paris itself was signed only by Great Britain, Austria, France, Prussia, Russia, Sardinia and Turkey, it has been subsequently adhered to by practically all the nations of the world. Spain did not adhere until June 18, 1908, nor Mexico until 1909. The signatories of the declaration agreed on articles, which, with the exception of the first, established principles that the United States had contended for from the drafting of the Plan of 1776 through all the struggles over neutral rights during the wars of the French Revolution and Napoleon, principles which it had sought in vain to write into the Treaty of Ghent.

The reason why the United States did not adhere to the Declaration of Paris was not due to any lack of sympathy with the principle of free

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29 Moore, op. cit., VII, 561-562.

ships, free goods but because it seemed too much of a sacrifice for a weak naval power to give up privateering unless the great maritime powers would abolish the capture of private property, excepting contraband, under all conditions. Secretary of State, Marcy, in the name of the President, refused to adhere to the declaration unless Article I should be amended by adding the words:

> And that the private property of subjects or citizens of a belligerent on the high sea shall be exempted from seizure by public armed vessels of the belligerent, except it be contraband.[30]

At the outbreak of the Crimean War the British Government in cooperation with the Government of France decided that they would recognize the same rules during the war, and together with this step had determined not to issue letters of marque to privateers. The decision not to employ privateers was induced by the realization that this legalized form of private warfare was a weapon primarily of the weaker naval powers. The Allies therefore were eager to prevent its use by Russia and hoped to secure the abolition of privateering. During the War of 1812 the United States had employed privateering as the most effective weapon against Great Britain. With regard to privateering the United States naturally shared the view of the small naval powers rather than those of England and France. The American Government therefore was unwilling to accept the ban on privateering unless it was coupled with a declaration for the total immunity of private property at sea.

The American policy as to privateers is well understood from President Pierce's Annual Message to Congress, December 4, 1854. An

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30 Carlton Savage, Policy of the United States Towards Maritime Commerce in War, I, 63.

article providing for the renunciation of privateering:

> ...for most obvious reasons, is much desired by nations having naval establishments large in proportion to their foreign commerce. If it were adopted as an international rule, the commerce of a nation having compsratively a small naval force would be very much at the mercy of its enemy in case of war with a power of decided naval superiority...in the event of war with a belligerent of naval supremacy...this Government could never listen to such a proposition. The navy of the first maritime power in Europe is at least ten times as large as that of the United States. The foreign commerce of the two countries is nearly equal...In war between that power and the United States, without resort on our part to our mercantile marine the means of our enemy to inflict injury upon our commerce would be tenfold greater than ours to retaliate. We could not extricate our country from this unequal condition, with such an enemy, unless we at once departed from our present peaceful policy and became a great naval power...when the honor or the rights of our country require it...it confidently relies upon the patriotism of its citizens...to augment the Army and the Navy so as to make them fully adequate to the emergency... Should the leading powers of Europe concur in proposing as a rule of international law to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States would readily meet them upon that broad ground.[31]

With the Outbreak of the Civil War, the United States suddenly found itself in the position of a belligerent with much the stronger navy. It therefore could now look with sympathy upon the British plea for abolishing privateering. Secretary Seward instructed Adams, the American minister in London, to press for the acceptance of the American plan for total immunity of private property on the high seas, but if this could not be obtained, to arrange for the acceptance of the Declaration of Paris as it stood. The same instructions were sent to Paris. The French and British Governments were quite willing to have the United States adhere to the declaration but pointed out that they could not,

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31 Richardson, op. cit., II, 2808.

consistently with their declarations of Neutrality, agree to consider confederate privateers as pirates during the course of the war. On the other hand the United States was willing to reverse its position only if it could obtain advantages in the current struggle. The previous administration had refused to accept the Declaration of Paris as it stood, including the article on privateering. Under the lead of Great Britain the powers presently rejected unconditional adherence as offered by the present American administration, unless limited to the period following the war; but they were willing to accept it for the period of the war, with the exception of the first article which abolished privateering. This was because the South, informally approached through the British consul and the French consul at Charleston, had signified its willingness to accept all but the first article of the Declaration of Paris.[32] Thus the United States lost a second opportunity to accept the Declaration of Paris as it stood, and with it lost an admirable opportunity to join with the other nations of the world in codifying a large measure of essentially American principles into the law of nations. That the United States did not formally adhere to the declaration did not mean that these became less essentially American principles. In fact it has observed all of them since, including the first article which abolished privateering. The United States Government has never commissioned a privateer since 1856. And in 1916 an American Secretary of State could flatly assert that "privateering has been abolished."[33]

As to the other rules of the Declaration of Paris, the United States

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32 Bemis, op. cit., 363.

33 Robert Lansing to the British Ambassador, Spring Rice, January 18, 1916, American Journal of International Law, II, 310. Identical notes were sent to diplomatic representatives of France, Russia, Italy, Belgium and Japan.

had earlier announced its acknowledgment that they were declaratory of international law. In 1859, Secretary Cass declared that the United States considered the principle of free ships, free goods, established, and that a neutral need not announce its adherence to the declaration in order to entitle its vessels to the immunity. On the outbreak of the war with Spain in 1898, the State Department instructed American diplomatic officers that this government would act upon the second, third and fourth articles of the declaration as "recognized rules of international law,"[34] and in President McKinley's proclamation of April 26, 1898, the second and third rules were adopted as the principles on which the United States would act during the war.[35] In view of the various pronouncements made by the Government of the United States since 1856 on all four articles of the Declaration of Paris there can be no doubt that it is not definitely committed to these principles as rules of international law. There has been no well-established principle of international law which has been so keenly contested as that of the "Freedom of the Seas".[36] Throughout her history the young American nation has fought for the common rights of all peoples upon the "great highway of nations". Even though a state were powerful enough to possess the high sea, the claim to exercise rights to sovereignty over it would not now (1893) be recognized as just, not so much by reason of the difficulty of effective possession, as because no good reason for its possession could be put forward.[37] The principle of freedom of the seas has become part of the

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34 Moore, op. cit., 455.

35 Foreign Relations of the United States, 1898, 772.

36 Green H. Hackworth, Digest of International Law, II, 653.

37 Ibid., II, 654.

foundation of American foreign policy, that is the small-navy policy of neutral rights; free ships, free goods; freedom to trade between port and port of an enemy in non-contraband goods; a carefully defined and restricted list of contraband; only effective blockade to be recognized; and the abolition of the capture of private property on the seas.

At the Hague Conferences of 1899 and 1907 and the London Naval Conference of 1909 attempts were made to codify international law so that the gains of the past century would be preserved. The United States continued its struggle for the rights of neutrals in wartime by presenting proposals in respect to immunity of private property from capture on the high seas, and a definition of contraband of war, which had caused many perplexities. In his instructions to the American delegations to the first Hague Peace Conference in 1899, Secretary Hay indicated the importance of the proposal for immunity for private property at sea.[38] The proposal was drafted and presented by Andrew D. White. The article was as follows:

> The private property of all citizens or subjects of the signatory powers, with the exception of contraband of war, shall be exempt from capture or seizure on the high seas or elsewhere by the armed vessels or by the military forces of any of the said signatory powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said powers.[39]

The Americans had little success with this proposal at the conference. The argument against it was that even if immunity be granted to private property, in so far as it is not contraband of war, a new question more

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38 Foreign Relations, 1899, 513.

39 Jessup, op. cit., 381.

intricate would arise, namely, that of defining what is to be understood today as contraband of war. In the discussions on the proposal Andrew D. White also pointed out the tendency of some belligerents to increase the category of contraband goods. During the sixteenth and seventeenth centuries it was common to define contraband in bilateral treaties in order that each country might have a clear guide when one of the contracting parties became a belligerent and the other remained neutral. Treaty definition continued till modern times but during wartime belligerents abused the rule of contraband to the extent that it destroyed practically all neutral trade.

Since most of the delegates had no instructions on the subject of the inviolability of private property in naval warfare the question was referred to a subsequent conference for consideration.

Accordingly, Secretary of State Root directed the attention of the American delegates to the Second Hague Conference on this question, and in addition laid stress upon the importance of defining the nature of contraband. Root also pointed out with striking emphasis the fact that the failure to define contraband would result in making practically ineffective not only the proposal for the inviolability of private property, but also the rules of the Declaration of Paris regarding the immunity of free ships and free goods and the question of blockade.[40] Since the first Hague Conference Congress had passed a resolution in support of the American advocacy of freedom of private property at sea (April 28, 1904).[41] The American delegation at the Second Hague Conference strongly

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40 Foreign Relations, 1907, Pt. 11, 1135.

41 United States Statutes at Large, XXXIII, 592.

urged the adoption of the American plan but it failed to receive a unanimous approval.

The subject of contraband also was fully debated but the only result achieved was an agreement upon a list of ten categories which all admitted should be considered as absolute contraband.

On the eve of the World War in 1914 only one Anglo-American difference of opinion, latent but potent, remained unsettled: the Freedom of the Seas. The greatest difficulty lies in the fact that prize courts have followed the practice of applying municipal law instead of international law. The Second Hague Conference endeavored to solve this by considering plans for the creation of an international Prize Court but was unable to create such a novel tribunal because of the lack of agreement on the application of the rules of prize law. Many of the nations were therefore unwilling to intrust such a court with full jurisdictional power. During past wars when a neutral vessel was seized for alleged carriage of contraband or some other offense it was "put in prize". That is the captor was compelled to prove before a prize court that the capture was justified under international law. The prize court was a court established by the belligerent country in which it sat, but the substance, although not the form, of the law it was supposed to administer was international law. Hyde states that:

> In a strict sense the prize courts apply municipal, not international law. The substance of the law is the court's interpretation of international law, but in form it is municipal law which has adopted, as its own, portions of international law.[42]

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42 Charles Cheyney Hyde, International Law, II, 802.

When municipal statutes or Orders in Council bound the court to rules conflicting with international law, the opportunity to administer international law practically ceased to exist. This condition led to the proposal for the establishment of an International Prize Court to serve as a Court of Appeal for the decisions of prize courts of belligerents. Since Convention XII, that provided for the International Prize Court, remained unratified in the 1907 Hague Conference the British Government therefore proposed a conference on the subject. This conference met in 1908-1909 and attempted to codify international maritime law. Each country was asked to prepare a memorandum setting forth its view as to the correct rule of international law on certain suggested points. The Declaration of London was in the main a restatement of the rules of international maritime law as they existed in 1909. The Declaration was signed on February 26, 1909 by the delegates of Austria-Hungary, France, Germany, Great Britain, Italy, Japan, The Netherlands, Russia, Spain, and the United States but was not ratified by any of the signatory powers, and it therefore never acquired the compelling force of a treaty.

The declaration begins with the preliminary provision that:

> The signatory powers are agreed in declaring that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.[43]

The importance of this provision can not be exaggerated since it indicates the views of the most distinguished international lawyers of the time. Since the declaration was never ratified the governments cannot be taxed with an adoption of the opinions of their delegates from which

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43 Naval War College, International Law Topics, 1909, 169 ff. The text of the declaration with the official explanation of the articles are found in this publication.

they withheld their final approval. Furthermore, despite the above preliminary provision, some of the articles adopted were the result of compromises between conflicting views. Since the conferees were professedly attempting merely to state existing rules of international law, the question of total immunity of private property at sea was naturally not considered. The proposal for the projected International Prize Court also came to naught.

Among the rules of the Declaration which merely reconfirmed established law was the requirement that:

> Art. 1. A blockade must be limited to the ports and coasts belonging to or occupied by the enemy.[44]

and that:

> Art. 19. Whatever may be the ulterior destination of the vessel or of her cargo, the evidence of violation of blockade is not sufficiently conclusive to authorize the seizure of the vessel if she is at the time bound toward an unblockaded port.[45]

It specifically provided that:

> Art. 18. The blockading forces must not bar access to the ports or the coasts of neutrals.[46]

These articles validated in effect, the American Civil War practice as to continuous voyage and protected neutral commerce in conditional contraband when bound to neutral countries. The United States in the Civil War involved the doctrine of continuous voyage to extend a blockade to the interception of neutral cargoes bound to a neutral port on the first leg of a voyage en route to the enemy by a subsequent short

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44 Ibid.

45 Ibid.

46 Ibid.

maritime leg. Great Britain had been careful to make no objection to that step; because later she might want to do the same and take another step in addition: that is to stop neutral cargoes continuously en route to a blockaded belligerent where the second leg of the voyage was overland through neutral countries. During the early years of the World War the neutral trade of the United States with the Scandinavian countries and Holland caused many diplomatic controversies between the British and American governments due to British claims that forbidden goods were reaching Germany through neutral countries.

The Declaration of London, foreseeing the danger of conflict between belligerent and neutral over the subject of contraband had endeavored to establish fixed lists. The lists prepared at the Second Hague Conference were adopted. Article 22 contains a list of articles under the name of absolute contraband and Article 24 contains articles and materials susceptible of use in war as well as for purposes of peace, regarded as contraband of war, under the name of conditional contraband. Supplementary articles were agreed to which left the belligerent the right of extending both categories by public declaration. The most futile of the articles is No. 28 which undertakes to set forth a list of seventeen materials or groups of materials which in no case are to be declared contraband. A comparison of these articles with the contraband lists of the World War points to the impossibility of such an agreement at any time. In order to insure the continued economic life of non-combatants and to enable neutrals to continue to trade with non-combatants the list of goods which were capable of both military and non-military use was established and were not liable to capture unless the captor could prove that they were destined for the army or the navy

of the enemy (Article 35). Such goods came to be known as goods conditionally contraband, the principal item of which consisted of foodstuffs. Conditional contraband according to this article was immune to seizure when bound for neutral ports. The German Government embodied the whole Declaration of London in its prize law. The reason was evident. It protected neutral trade and in a future maritime war Germany could depend on adjacent neutrals for supplies. In Great Britain the Declaration had also passed the House of Commons in 1910 but was blocked in the House of Lords on the ground that it was too favorable to neutral commerce. Ratification had been advised by the United States Senate, but had not been completed by 1914. So the declaration of London never became international law.

By 1914 the international law of neutral rights and obligations was a working balance between neutral and belligerent interests--the result of a long series of compromises founded on custom and practice, fortified by treaties. The principle of this balance or compromise was that the neutral states agreed not to assist the military operations of belligerents, and the belligerents agreed not to impair the non-military trade of neutrals, even with enemy population.

In philosophy and in law the establishment of neutrality and its privileges has until recently been considered a victory for civilization over brute force, for law over anarchy. In a recent address Under Secretary of State, Sumner Welles, made the following statement concerning the attitude of the nations toward law and order:

> Perhaps the greatest achievement of the civilized world in the latter decades of the nineteenth century was the growing reliance of governments upon the sanctity of the pledged word. Treaty promises were kept. Treaty rights were respected. I wish the world of 1939 could believe with the same measure

> of assurance as did the world of 1899 and 1907 at the time of the Hague Conferences that the observance of treaty obligations was axiomatic.[47]

The gains of the past century proved that neutrals can by skill and candor obtain and enforce a recognition of their rights. The rising strength of neutrals had been due in part to the fact that there had not been a great maritime war since 1814. In the summer of 1914 hope ran high in the minds of the American people that international law would protect the United States from all danger of entanglement in the European war, and at the same time preserve their rights to trade and travel on the high seas. Comparatively few Americans knew at the time that there had never been any force behind international law, except the integrity of nations which subscribed to its tenets. The mere suggestion that neutrals should surrender their rights gained in the past century would turn the control of the seas over to the belligerents. While it takes a long time to build up such a legal structure it takes much less time to destroy it.

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47 Address before the Annual Meeting of the New York Bar Association, New York City, January 28, 1939, United States Department of State Press Releases, XX, No. 487, 47.

Chapter Three

AMERICAN DEFENSE OF NEUTRAL RIGHTS ON THE HIGH SEAS

1914-1917

The nations of Europe were armed to the teeth with every device and implement of destruction that the ingenuity of the men, who had been engaged in scientific research for half a century or more, had been able to produce. Two new "spheres" of warfare had been made available by the invention of the airplane and the submarine. In addition to this, modern means of communication, which had brought all the capitals of Europe within talking distance of Washington, helped to set the stage for the "war to end wars".

There was no doubt that the modern instruments of warfare would bring about serious alterations in the application of the rules of neutrality. Upon the outbreak of the World War in 1914, the political alignment from the standpoint of neutrality was similar to that which existed a century before. The United States was again the leading neutral and became once more the champion of neutral rights. No one contested the general proposition that neutral nations had a right to continue their normal trade, and by virtue of the agreement upon the rules enunciated in the Declaration of Paris, the only non-contraband property which could be confiscated at sea was the property of a belligerent in a belligerent ship. The exception of contraband and also that of blockade left an opening through which, as it developed, the belligerent was able to practically destroy the neutral's commercial freedom. Although the American Government found itself in constant conflict with both the Allied and the Central Powers, the infringements

of the rights of American neutral traders did not prevent an actual large trade profit to the United States. This fact was constantly pressed by the British government and was an important factor in weakening the American protest.[1]

Immediately after the outbreak of hostilities in Europe, President Wilson issued the customary proclamation of neutrality. It was dedicated to the principles of "strict" and "impartial neutrality" stressing the duties of a neutral nation. The President proclaimed that:

> The Statutes and the treaties of the United States and the Law of Nations alike require that no person within the territory and jurisdiction of the United States shall take part, directly or indirectly...but shall remain at peace with all of the belligerents, and shall maintain a strict and impartial neutrality...all citizens of the United States and others who may misconduct themselves in the premises, will do so at their peril, and they can in no wise obtain any protection from the consequences of their misconduct.[2]

"Strict and impartial neutrality" implied that trade would be carried on with both groups of belligerents as in time of peace. President Wilson realized the danger involved in any expression of partiality toward either group of belligerents. For this reason he made a direct appeal to the people of the United States, whose people were drawn chiefly from the nations at war, to remain neutral "in thought as well as in action".

> The effect of the war upon the United States will depend upon what American citizens say and do. Every man who really loves America will act and speak in the true spirit of neutrality, which is the spirit of impartiality and fairness and friendliness to all concerned...it will be

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1 "Diplomatic Correspondence between the United States and Belligerent Governments Relating to Neutral Rights and Commerce", American Journal of International Law, Special Supplement, IX, (1915), 158.

2 Foreign Relations, 1914, Supplement, 560.

> easy to excite passion and difficult to allay it...The United States must be neutral in fact as well as in name during these days that try men's souls. We must be impartial in thought as well as in action...[3]

To be neutral in thought and feeling proved eventually impossible even for the President himself, to say nothing of his ambassadors and ministers abroad. Even before belligerent propaganda had begun to function in the United States the great majority of the American people were immediately sympathetic to the Allied "cause", a holy crusade for democracy against autocracy.

It would be virtually impossible to formulate a clear-cut definition of principles of American neutrality for the years 1914 to 1917 for the simple reason that the President, his Secretary of State, and his official and unofficial representatives in Europe each had a policy separate and distinct in its principles. The President, according to Millis, had been definitely committed to a policy of intervention as early as January, 1913, when,

> Colonel House told a friend that he intended to get Wilson to let him bring about a better understanding between England and Germany.[4]

House was familiar with the plans of the President along social and political reform--the idea of working out a distribution of national boundaries that would make the world safe from future wars. In January, 1914, the President sent Colonel House as his personal representative on a "secret mission" to the capitals of Europe. The Ambassador to Great Britain, Walter Hines Page, who quickly developed into an inter-

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3 An appeal to the people by the President presented in the Senate and ordered printed, August 19, 1914, ibid., 551.

4 Walter Millis, The Road to War, 22.

ventionists, gave moral support in the efforts of Colonel House to bring about a better understanding among the statesmen of Europe. The evident spirit of impartial neutrality of the President was easily nullified by the work of Page and House. While Colonel House had been doing missionary work in favor of a League of Nations, Page threw himself wholeheartedly into the task of making the American people understand that the Entente Allies were fighting a holy war, and that England was leading the crusade against militarism and autocracy. That tied up beautifully with the plan for the League of Nations to preserve the fruits of the "holy crusade"; hence the perfect teamwork of the official and unofficial representatives of the administration.

In view of the fact that London was the clearing house for all news from the continent, fair and impartial neutrality for the American people was doomed from the very beginning of the conflict. Page made no effort to obtain fair and unprejudiced reports of war activities. Whenever the State Department in Washington pressed him for information he relied on the opinion of his friend and co-crusader, Sir Edward Grey, especially in matters relating to German atrocities in Belgium, the moral and political implications of Belgium neutrality and the shocking violations of the recognized rules of civilized warfare such as the use of poisonous gases against the troops in Flanders.[5] Germany found it difficult to reply to Allied propaganda on account of her own conduct and especially her flagrant violation of international law due to submarine warfare.

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5 American Journal of International Law, Special Supplement, IX, 157.

Unfortunately, the President and his Secretary of State were at cross purposes from the moment hostilities broke out in Europe. Bryan wanted to take a straight middle-of-the-road course in all dealings with the belligerents, and settle mooted questions by arbitration. President Wilson, on the other hand, was definitely in favor of settling every issue according to the rules of international law. As early as August 25, 1914, the British Ambassador, Spring Rice, could say with reasonable justification that:

> All the State Department are on our side except Bryan who is incapable of forming a settled judgment on anything outside party politics. The President will be with us by birth and up-bringing.[6]

Bryan's objectivity in matters of American rights and his genuine neutrality doubtless irked the good ambassador.

On August 4, 1914, Secretary of State, Bryan instructed the American diplomatic representatives in the capitals of the principal belligerents to inquire whether the Governments at war would be willing to agree to abide by the laws of naval warfare as laid down in the Declaration of London of 1909, provided such agreement was reciprocal. Acceptance of these provisions, said the United States, would prevent the possibility of grave misunderstandings in relations between belligerents and neutrals.[7] Germany and Austria accepted the proposal, and agreed to be bound by the rules in question on condition of reciprocity. Great Britain, France and Russia replied that they had decided to adopt, generally the rules of the Declaration of London, subject to certain modifications

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6 Stephen Lucius Gwynn, The Letters and Friendships of Sir Cecil Spring-Rice, II, 220.

7 American Journal of International Law, Special Supplement, IX, 1

which they deemed indispensable to their belligerent interests.[8]

Great Britain and her allies were planning a blockade of Germany. According to Article 1 "a blockade must not extend beyond the port and coasts belonging to or occupied by the enemy". It was specifically provided that the "blockading forces must not bar access to neutral ports or coasts". (Art. 18). These rules naturally prevented any blockade of the Dutch or Scandinavian ports or any effort to control traffic for those ports except in munitions of war or goods absolutely contraband, destined for Germany or Austria. The first contraband list of August 5 issued by Great Britain corresponded very closely with the provisions of the Declaration of London. The only exception was that aircraft was transferred from the list of goods conditionally to the list of goods absolutely contraband. But on August 20, 1914, the British Government issued an Order in Council which materially modified the Declaration of London to the disadvantage of neutrals.[9] Article 33, which prohibited the capture of goods conditionally contraband except on proof of direct enemy military destination, was modified so as to permit capture if the goods were destined to a neutral country, under presumptions of ultimate enemy destination which gave Great Britain practically complete control of all neutral trade. This constituted a flat violation of international law according to the opinion of Lord Salisbury in 1900:

> Food stuffs, with a hostile destination, can be considered contraband of war only if they are supplies for

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8 Foreign Relations, 1914, Supplement, 219.

9 American Journal of International Law, Special Supplement, IX, 14.

> 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 seizure.[10]

Since Article 65 of the Declaration of London stated that its provisions must be treated and accepted as a whole, and since Great Britain, France, Russia and Belgium had not been able to accept it without modification, the United States withdrew its proposal in defeat. It was stated that since some of the belligerents would not accept the declaration without modification, the American Government:

> ...Insists that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States, irrespective of the provisions of the Declaration of London; and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated or their free exercise interfered with...[11]

by the belligerent authorities. Due to "changed conditions" of warfare and the failure to ratify the Declaration of London, it was difficult to say what was existing International Law. Professor Jessup has adequately summarized these rules as they would have been deemed fundamental by nearly every international lawyer in 1914:

1. "Paper" blockades are illegal. A blockade to be binding must be effectively maintained by an "adequate" naval force.

2. Even enemy goods are safe on a neutral ship, if they are not contraband and if they are not destined for a blockaded port: "Free ships make free goods".

3. Neutral goods are safe even on an enemy ship, if they are not contraband and if they are not destined for a blockaded port.

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10 Moore, op. cit., VII, 685.

11 American Journal of International Law, Special Supplement, IX, 1.f.

4. A fortiori, neutral goods are safe on a neutral ship but only if they are not contraband and if they are not destined for a blockaded port.

5. Contraband goods are divided into two categories: absolute and conditional.

6. Absolute contraband consists of goods exclusively used for war and destined for an enemy country, even if passing through a neutral country en route; the rule of "continuous voyage" applies.

7. Conditional contraband consists of goods which have a peaceful use but which are also susceptible of use in war and which are destined for the armed forces or a government department of a belligerent state; the rule of "continuous voyage" does not apply.[12]

British Diplomacy emerged victorous from the long debate with the United States over the acceptance of the Declaration of London. It was evident that the United States would do no more than make feeble protests to the extension of the contraband lists; that it would clear vessels carrying munitions of war; that it would not establish a competing government-owned merchant marine; that it would admit armed British ships to American ports; that it would remain an open market for munition supplies to the Allies; and that it would not insist upon the American right to continue trade with the neutral countries of Europe, Holland and Scandinavia. According to the interpretation of Borchard and Lage:

> These decisive victories for Allied diplomacy, some of which were vital in the process of sliding America into war, were not merely evidence of superior diplomatic skill. Their more important result was to indicate to Great Britain at once that it had strong friends in the administration who sympathized with the British point of view and would not insist on American rights, if such insistence conflicted with British policy.[13]

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12 Edwin Borchard and William P. Lage, Neutrality for the United States, 16-17.

13 Ibid., 60-61.

It was between August and October, 1914, that the British Government discovered just how far it could press the United States and to what extent American official aid in this war was to be expected. There is no doubt that the Wilson Administration desired to see the Allies win. President Wilson approved the opinion of Sir Edward Grey that despite the restrictions upon American trade, America must remember that Britain is fighting this war to save the civilization of the world. To Colonel House, the President remarked on August 30, 1914,

> ...that if Germany won, it would change the course of our civilization and make the United States a military nation.[14]

The personal commitments of high officials in Washington and London coupled with the emotional, cultural and economic factors that influenced the American people made impartiality to both groups of belligerents an impossibility. Although President Wilson had entertained hopes of remaining neutral and keeping America out of the war, he soon found himself entangled in an emotional drift toward intervention in the war.

Loans to the Allied Governments and the sale of munitions created an economic tie-up between the United States and the Allies. During the first month of the war the J. P. Morgan Company asked the State Department what the attitude of the government would be in case American bankers should be asked to make loans to belligerent governments in Europe. Secretary Bryan's reply was that:

> ...in the judgment of this Government loans by American bankers to any foreign nation which is at war are inconsistent with the true spirit of neutrality.[15]

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14 Charles Seymour, Intimate Papers of Colonel House, I, 333.

15 Foreign Relations, 1914, Supplement, 380.

In the autumn of 1915 this policy was reversed. Former Secretary Bryan's policy of frowning upon belligerent loans was changed by the President upon the advice of the Secretary of State, Lansing.[16] He believed that there was no way in which the Government could prevent private loans from being made to belligerents since such loans were in violation of no law of the United States and there was no way in which those making the loans could be prosecuted. During the remaining period of neutrality a total of $1,900,000,000 in private loans was extended to the Allies.[17] These loans helped to build up the lucrative commerce in contraband of war with the Allied Powers. During the first three months of the war the State Department received numerous inquiries from American business men and other persons as to whether they could sell to governments or nations at war contraband articles without violating the neutrality of the United States. Some of the people believed the sale of contraband articles to be unneutral acts which the Government should prevent. To clear up widespread apprehension, the Secretary of State made this explanation in a Public Circular issued October 10, 1914,

> ...a citizen of the United States can sell to a belligerent government or its agent any article of commerce which he pleases. He is not prohibited from doing this by any rule of international law, by any treaty provisions, or by any statute of the United States. It makes no difference whether the articles sold are exclusively for war purposes, such as firearms, explosives, etc., or are foodstuffs, clothing, horses, etc., for the use of the army or navy of the belligerent...Such sales...do not in the least affect the neutrality of the United States...Such articles

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16 Ibid., 1915, Supplement, 820.

17 Letter of Secretary of the Treasury to the President of the Senate, January 27, 1920, Sen. Doc., No. 191, 66 Cong., 2 sess., 1-6.

> are subject to seizure by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizen have sold them. If the enemy of the purchasing nation happens for the time to be unable to do this that is for him one of the misfortunes of war...For the Government of the United States itself to sell to a belligerent nation would be an unneutral act...[18]

Thus the Administration put its stamp of approval on the munitions trade which began to develop by leaps and bounds.

During the early part of the war Great Britain had reasons for not interferring too seriously with the neutral rights of the United States. Secretary of State, Bryan stood for an embargo on arms, for prohibition of loans, and for legislation prohibiting Americans to travel on belligerent vessels except at the travelers own risk, policies which some administration leaders opposed. Later a group of Democratic members of Congress introduced legislation to bring about an embargo on munitions to all belligerents.[19] Great Britain and the rest of the Allies feared such an embargo and therefore could not afford to disregard American rights. A general embargo would deprive the Allies of an indispensable supply of munitions which were needed to equip their armies to survive the terrible onslaught of the German army on the continent. Sir Edward Grey, the British Secretary for Foreign Affairs, later stated this very clearly in his memoirs after the war.

> Germany and Austria were self-supporting in the huge supply of munitions. The Allies soon became dependent for an adequate supply on the United States. If we quarreled with the United States we could not get that supply. It

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18 United States Department of State, The Lansing Papers, I, 113.

19 Foreign Relations, 1914, Supplement, 216-63, 573-574.

> was better therefore to carry on the war without blockade, if need be, than to incur a break with the United States about contraband and thereby deprive the Allies of the resources necessary to carry on the war at all or with any chance of success...[20]

The United States had an exceptional weapon, namely the embargo, by which she could force Great Britain to observe neutral rights as described by international law. The change of policy on loans to belligerents as well as the opposition of the Administration to embargo legislation indicates that the United States did not use the commercial weapons in her hands to moderate the pressure on neutral trade as it might have against the Allies.

The American export interests, some of them smarting under the suspicion that Britain was increasing its own trade with the neutral countries of northern Europe at their expense, were appeased less by the mild protests of their government than by the growing prospect of large and profitable sales to the Allies. During the first year of the war the American trade was bilateral. Some American citizens continued to trade with Germany in spite of British opposition. During the debate over British interference with the right of American citizens to carry on neutral trade with Europe, Page, who usually acted as Grey's advisor, informed Grey that the United States would not press the cause of people who deliberately and directly traded with Germany, but that more tact would be necessary in dealing with the question concerning trade with other neutrals because,

> ...there was great feeling against stopping legitimate trade with Holland which had always been large, and it was difficult to disentangle the two questions.[21]

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20 Sir Edward Grey, Twenty-Five Years, (1892-1916), II, 107.

21 Foreign Relations, 1914, Supplement, 235.

The American position with respect to the two warring groups was essentially different. Looking at the matter as a question of neutral trade, the United States differences with Germany centered around the submarine campaign and war zones, which in turn involved the laws of contraband and blockade. With England, because of her control of the seas, American commercial interests conflicted with the whole British plan of economic pressure on the Central Powers. From the beginning of the war each belligerent group was eager to reach out for the most deadly weapon, economic strangulation and starvation.

Step by step England was able to get control of all neutral shipping, in fact all international trade on the high seas. The purpose was to prevent goods to reach enemy territory. Great Britain delayed her blockade measures until the developing war trade of the Allies had stayed the United States from the brink of an imminent depression. Economic interests moderated the United States protests and prevented the issues involved from provoking a serious crisis.

To accomplish the object of cutting off all supplies from the Central Powers, Great Britain applied various instrumentalities. The achievement of this end was sought by utilizing the old doctrines of contraband and blockade and the new doctrines of war zones, blacklists, embargoes and rationing and shipping agreements.

Judge John Bassett Moore contends that the looseness of the contraband doctrine weakens the whole system of neutral rights. A neutral may seize neutral property if it is contraband. If all goods were contraband, all neutral property could be seized.[22]

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22 John Bassett Moore, International Law and Some Current Illusions, (1924), 47-48.

From the very first days of the war, the contraband lists of both sides were enlarged till they included practically all important items of international trade. In a report that Ambassador Page made to the Secretary of State he states that goods are divided into three classes, (a) goods used primarily for war purposes (b) goods which may be used for warlike or peaceful purposes and (c) goods which are exclusively used for peaceful purposes. As to the articles which fall within any one of these classes there has been no general agreement in the past, and the attempts of belligerents to enlarge the first class at the expense of the second, and the second at the expense of the third have led to considerable friction with neutrals.[23]

As a result of a series of Orders in Council issued by the British Government in 1914 practically every merchant ship was required to touch at an English port before proceeding to any enemy port or to a neutral nation.[24] Once the neutral merchantmen were in an English control port they were often forced to discharge their cargoes for examination, and were subject to costly delay while the authorities ascertained whether there was sufficient evidence to justify formal seizure for prize court proceedings.[25] The practice of right of visit and search previous to this time had been restricted to the high seas. A change in the rule of evidence was also effected. The burden of proof was removed from the captor to the cargo owner and it was his duty to prove that the goods would not ultimately reach enemy territory. This made it

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23 Ambassador in Great Britain (Page) to the Secretary of State, London, January 5, 1916, Foreign Relations, 1916, Supplements, 331.

24 The more important Orders in Council are printed in American Journal of International Law, Special Supplement, IX, (1915), 14, 110.

25 Herbert W. Briggs, The Law of Nations: Cases, Documents and Notes, 898-900.

difficult for the neutral shipper to continue trade with the neutral countries of northern Europe.

The World War of 1914-1918 in one sense was a repetition of the Napoleonic Wars of a century ago. It was merely a series of retaliatory measures, where one hostile measure was the pretext for another. At the beginning of the war Great Britain accused Germany of planting automatic contact mines of the forbidden class despite the injunction of the Third Hague Convention against laying "automatic contact mines" off the coast or ports of the enemy, with the sole object of intercepting commercial shipping" and the duty imposed by the Convention to take "every possible precaution...for the security of peaceful shipping."[26] On November 3, 1914 Britain declared the whole North sea a "military area" which neutral shipping entered at its own risk and advised ships to follow British directions for their safety.[27] The risk was, of course, from mine fields. The United States did not protest. Secretary Bryan merely stated to the United States Minister in Norway that:

> ...this Government does not see its way at the present time to joining other governments in protesting to the British Government against their announcement...[28]

The German Government responded on February 4, 1915 by proclaiming the waters surrounding Great Britain and Ireland a war zone in which enemy merchant vessels would be destroyed and neutral ships would be exposed to danger. The German Admirality stated that:

> Even neutral ships are exposed to danger in the war zone as in view of the misuse of neutral flags ordered

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26 Malloy, op. cit., II, 2310.

27 Foreign Relations, 1914, Supplement, 464.

28 Ibid., 466.

> on January 31 by the British Government and of the accidents of naval war, it can not always be avoided to strike even neutral ships in the attacks that are directed at enemy ships.[29]

Germany had decided to intercept all commerce with England or her allies by resorting to unprecedented naval warfare--the use of the submarine. The United States sent a firm note of warning to the Imperial German Government which practically denied it the right to attack and destroy any belligerent vessel within the prescribed war zone without first ascertaining its belligerent nationality and the contraband character of its cargo. The American Government based its position on the pre-war rules of blockade and visit and search. The note declared that:

> The sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which this Government does not understand to be proposed in this case...If the commanders of German vessels of war should act upon the presumption that the flag of the United States was not being used in good faith and should destroy on the high seas an American vessel or the lives of American citizens...the Government of the United States would be constrained to hold the Imperial German Government to a strict accountability for such acts...and to take steps... to safeguard the lives and property and to secure to American citizens the full enjoyment of their acknowledged rights on the high seas.[30]

The United States had plainly asserted its sacred doctrine of the freedom of the seas. It insisted upon the belligerent right to visit and search which would practically prohibit Germany from resorting to submarine warfare if she desired to continue to abide by international law. The submarine was too small, slow and vulnerable to operate under

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29 Ibid., 1915, Supplement, 94.

30 Ibid., 98-99.

ordinary rules of visit and search and to provide for the safety of the crew and passengers.

British use of neutral flags and especially the flag of the United States for the purpose of escaping capture made it imperative that Germany practice the right of visit and search. Although the United States protested to Britain for the misuse of the American flag, the British Government excused the action by declaring that the purpose was to compel the enemy to follow ordinary obligations of naval warfare and to satisfy himself as to the nationality of the vessel and the character of her cargo by examination before capturing her.[31]

Germany was determined not to permit England, now practically in control of all neutral commerce, to strangle the economic life of Germany and accomplish the starvation of the German people. The German minister for Foreign Affairs in a note to Ambassador Gerard, February 16, 1915 justified Germany's resort to submarine warfare on the ground that the German Government and the German people felt themselves placed at a great disadvantage through the fact that the neutral powers had not asserted their right to trade with Germany but had made unlimited use of their right to trade in contraband with England and had allowed England to restrict such trade to Germany. Therefore the German Government had the right to stop trade in arms and other contraband. The German minister further stated that if England had the right to invoke the powers of famine as an ally in her struggle against Germany then the German Government had the right to appeal to the same grim ally.[32]

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31 Ibid., 100.

32 American Journal of International Law, Special Supplement, IX, 90.

Geographical factors played an important part in the actions of the Allies and the attitude of the United States toward the war. The position of the United States made it possible for her to build up an enormous war trade with the Allies, thus offsetting the losses on the continent of Europe. The European neutrals were not so fortunate. Their geographical relation to the Central Powers made them the special object of Allied attention, which resulted in rather novel lines of procedure. The Allied Powers had command of the seas and the maritime approaches to Germany. Because of their overwhelming naval strength they were able to enforce their economic blockade of Germany without destroying neutral merchant ships or endangering the lives of neutrals. On the other hand Germany could make its counter-blockade effective only by the use of submarine warfare, which entailed the loss of neutral ships and neutral lives. Neutral and belligerent ships were attacked and sunk, sometimes without warning and without any provision for the safety of passengers and crew. Each incident involving American lives strengthened the anti-German sentiment, some of which had existed from the early part of the war. Since the beginning of the submarine campaigns American protests to Britain over the infringement of neutral rights assumed an unreal character. Protests continued to be made to Great Britain to satisfy those elements in the United States that believed in being impartial and were blind to the cause of the Allies. It was becoming clearer as the war continued that Allied support was more important than mere legalism.

The British government was determined not to alter its policy of prosecuting the war in the face of American protests. The offenses of England against the neutral rights of American citizens might have

brought more serious results had Germany not committed a far greater offense.

England was ready to try her most effective weapon. In retaliation to the German submarine war zone she announced her "long-range" blockade by the Order-in-Council of March 11, 1915.[33] The economic blockade of Germany took on so many different phases that it was impossible to identify it with previous blockades. In fact the various Orders in Council of England avoided the term "blockade" but referred to its various phases as "measures adopted to intercept the seaborne commerce of Germany".

The blockade in a broad sense was described by the British government in January, 1916. It was declared that in March, 1915,

> The Allied Governments...decided to stop all goods which could be proved to be going to or coming from Germany. The state of things produced is in effect a blockade, adapted to conditions of modern war and commerce, the only difference in operation being that the goods seized are not necessarily confiscated.[34]

Ancient blockades were based on the idea of seige, limited to the ports of the enemy to prevent the ingress and egress of persons and materials. The Allied blockade during the last war was designed to destroy the import and export trade of Germany, as well as the financial credit and standing of that nation.

One of the main features of the blockade was, of course, the cutting off of imports into Germany. The prize courts were granted wide discretion in handling all neutral trade. All goods were subject to con-

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33 Foreign Relations, 1915, Supplement, 144.

34 British Parliamentary Papers, ("Blue Books"), Misc. No. 2, 1916, 3.

fiscation. Any merchant vessel which had cleared for a neutral port from a control port and then proceeded to an enemy port was subject to condemnation on any subsequent voyage if captured. Goods not consigned to an organization set up by the Allies in each one of the neutral countries of Europe were condemned on suspicion that they might fall into the hands of the enemy. The purpose of the designated consignee organized by the Allies was that the organization would receive the goods and guarantee that they would be used by the neutral country and not go to Germany. Raw materials were condemned on their way to neutral ports if it was thought that they could be manufactured into goods which in turn might reach Germany. The blockade measures were assisted by mined areas, the embargoes and the blacklists. Neutral ships were prevented from entering neutral ports without submitting to the blockade measures.

It was inevitable that such a blockade would arouse the opposition of the neutral powers. The United States Department of State drew up a long protest dated March 30, 1915.[35] The American Government pointed out the vital defects in the blockade from the traditional legal standpoint. In the first place it was noted that contrary to all rules and precedents the blockade extended to neutral ports and coasts. Secretary Bryan asserted that if the provisions of the Orders in Council providing for the blockade were to be actually carried into effect as they stood, it would be the assertion of unlimited belligerent rights over neutral commerce within the whole European area, and an almost unqualified denial of the sovereign rights of the nations at peace.[36]

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35 Foreign Relations, 1915, Supplement, 152.

36 Ibid., 158.

As defined by the Order in Council of March 15, 1915 the blockade included all the coasts and ports of Germany and every port of possible access to enemy territory. Bryan stated concerning it in the official protest:

> But the novel and quite unprecedented feature of that blockade, if we are to assume it to be properly so defined, is that it embraces many neutral ports and coasts, bars access to them, and subjects all neutral ships seeking to approach them to the same suspicion that would attach to them were they bound for the ports of the enemies of Great Britain, and to unusual risks and penalties...such limitations, risks, and liabilities placed upon the ships of a neutral power on the high seas, beyond the right of visit and search and the right to prevent the shipment of contraband already referred to, are a distinct invasion of the rights of the nation whose ships, trade, or commerce is interfer[illegible] with.[37]

The position of the United States was, however, weakened by Bryan's statement that the American Government,

> ...might be ready to admit that the old form of "close" blockade with its cordon of ships in the immediate offing of the blockaded ports is no longer practicable in face of an enemy possessing the means and opportunity to make an effective defense by the use of submarines, mines, and air-craft; but it can hardly be maintained that whatever form of effective blockade may be made use of, it is impossible to conform at least to the spirit and principles of established rules of war.[38]

On May 7, the Lusitania was sunk. This gave Sir Edward Grey an opportunity to delay his reply to the American protest till July 23, 1915. The British replies were usually sent at a time when the United States was in the midst of a controversy with Germany so that they would have less effect on public opinion in America. The British

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37 Ibid., 153.

38 Ibid., 154.

Foreign Minister relied on the admission of Secretary Bryan when he finally sent his reply to the American protest. Sir Edward Grey said that he could not admit

> ...that a belligerent violates any fundamental principle of international law by applying a blockade in such a way as to cut off the enemy's commerce with foreign countries through neutral ports if the circumstances render such an application of the principles of blockade the only means of making it effective.[39]

In support of his reply he relied on the inhumane methods of warfare used by Germany; on the fact that the measures which England was enforcing had no detrimental effect on the commerce of the United States; and on the sinking of the Lusitania. Grey also undertook to defend the control of American trade with Holland and the Scandinavian countries on the ground that precedents of the American Civil War had established the doctrine of "ultimate destination" and "continuous voyage". During the Civil War the United States found it necessary to declare a blockade of some 5,000 miles of coast line, a military operation for which the number of vessels available was at first very small. The Confederate Armies were dependent on supplies from over seas and those supplies could not be paid for without exporting cotton. It was vital for the Federal Government to cut off this trade. British traders adopted the plan of sailing to Bermuda and other West Indian ports in order that they might allege a neutral destination and thus avoid capture for contraband-carrying or blockade-running, if encountered by an American cruiser. In a number of important cases, the Supreme Court of the United States declared that in reality there was one continuous voyage

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39 Ibid., 168.

from England to the belligerent and blockaded ports of the South.[40] Several of these decisions formed the basis for British claims which were referred to arbitration. The general principle of the application of the doctrine of continuous voyage was approved by the international tribunal at Geneva in 1871.[41] In order to stop the illegal trade in contraband with the Southern ports during the Civil War, the Federal Government applied the doctrine of continuous voyage under which goods destined for enemy territory were intercepted before they reached the neutral ports from which they were to be re-exported.

According to the American contention the application of the doctrine of continuous voyage by the British was not identical with that during the Civil War. The Southern ports during the Civil War were under a lawful blockade and the goods seized before they reached neutral ports were limited to contraband goods intended for the Confederate Army.[42] The British blockade of Northern European neutrals intercepted contraband as well as non-contraband goods without the "close" blockade described by international law.[43]

In his Note of October 21, 1915, Secretary of State Lansing challenged other defects in the British blockade. One principle of blockade was that it must apply impartially to the ships of all nations. The British blockade made no attempt to prevent traffic between the German ports and those of Denmark, Norway and Sweden. British exports were constantly being made to those northern neutrals whose ports were included in the blockade. Secretary Lansing protested against all the

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40 Moore, op. cit., VII, 697 f.

41 Ibid., 943.

42 Borchard and Lage, op. cit., 70.

43 Moore, op. cit., VII, 709.

British practices of control employed thus far in the war. He protested against the illegal extensions of contraband and blockade; against the unlawful practice of diverting ships from the high seas into British ports to search for evidence that the cargo might reach Germany; against the long detentions of vessels in British ports; against the condemnation of goods which ultimately were resold by British merchants to neutral countries; and against the abuses of the prize court in placing the burden of proof on the neutral shipper. In view of these agruments the American Secretary of State asserted that:

> It is incumbent upon the United States Government, therefore, to give the British Government notice that the blockade, which they claim to have instituted under the Order in Council of March 11, can not be recognized as a legal blockade by the United States.[44]

The Lansing protest was purely legal but merely formal. In fact the British Ambassador had been assured that it was merely formal and its purpose was to make a good showing before congress met. In connection with the protest of October 21, 1915 Spring Rice sent Sir Edward Grey the following note:

> The United States must defend their rights and they must make a good showing before Congress meets, but that the correspondence should not take a hostile character but should be in the nature of a juridical discussion.[45]

As already observed, Secretary Lansing admits that the notes to Britain

> ...were long and exhaustive treatises not designed to accomplish a settlement but to assure a continuance of the controversies leaving the questions unsettled,

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44 Foreign Relations, 1915, Supplement, 578.

45 Gwynn, op. cit., II, 282.

> which was necessary in order to leave this country free to act and even to act illegally when it entered the war.[46]

The long drawn-out controversy over the British blockade announced in March, 1915 was interrupted by the sinking of the Lusitania. The submarine campaign initiated by Germany in February, 1915 seems to have offended President Wilson, for he began to talk about intervention on the side of the Allies. Until the spring of 1915 it seems that he was sincere in his defense of neutral rights and desire to keep America out of the conflict. A statement made by Woodrow Wilson on April 20, 1915 reveals a flash of Jeffersonian inspiration in him.

> I am interested in neutrality because there is something so much greater to do than fight; there is a distinction waiting for this nation that no nation has ever yet got. That is the distinction of absolute self-control and self-mastery.[47]

It was the German submarine campaign which finally brought the United States into the War. The very thing that caused the downfall of Germany was the salvation of England. The crux of the controversy between the United States and Germany was that Wilson was determined to defend the right of American citizens to travel on belligerent vessels. He felt that "national honor" required him to fight for this principle. In the beginning of the war Great Britain had announced the arming of merchant vessels for defensive purposes only.[48] This was followed by a further notification that the British merchant vessels

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46 Robert Lansing, War Memoirs of Robert Lansing, Secretary of State, 288.

47 Ray Stannard Baker and William Edward Dodd, Public Papers of Woodrow Wilson, III, 305.

48 Foreign Relations, 1914, Supplement, 598.

would never be used for purposes of attack, that they were merely peaceful traders armed only for defense and that they would never fire unless fired upon.[49] The United States Government took the same stand that as long as merchant vessels were armed for defensive reasons they should be regarded as peaceful traders.

On February 10, 1915 when the submarine campaign was started in earnest, British vessels were ordered to resort to ramming tactics and ten days later were given the right to fire upon submarines on sight.[50] This placed the United States in a precarious position and rendered its position on armed merchant vessels meaningless. The revival of the practice of mounting guns on merchant vessels exposed the unarmored submarine to the greatest danger if it adhered to the rules of visit and search. As a result of this practice Germany even abandoned the usual warning given at first.

On February 20, the United States Government proposed a compromise by which Great Britain and Germany would agree to stop the practice of planting floating mines and submarines would not attack merchant vessels except to enforce the right of visit and search; foodstuffs from the United States would, through the cooperation of an American agency in Germany, be controlled for civilian use, and Great Britain would agree not to make foodstuffs absolute contraband and not to interfere with goods consigned to the designated agency in Germany.[51]

When the British refused to accept the American proposal Colonel

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49 Ibid., 604.

50 Ibid., 1915, Supplement, 653.

51 Ibid., 120.

House was ready to present another compromise which he entitled the "Freedom of the seas". It provided that:

> ...The contraband list should be restricted so as to include only actual implements of warfare; everything else should be placed upon the free list. The trade of merchant vessels, whether belligerent or neutral, should be allowed to proceed freely outside territorial waters so long as they carried no contraband. They might even enter any belligerent port without hindrance, unless that port were actually and effectively blockaded by the enemy's fleet.[52]

Great Britain was, however, not interested in the American proposal to admit food to Germany for that was her only hope to bring about the defeat of Germany. While Great Britain tightened her blockade and German submarines continued to sink English merchant vessels, American citizens did not heed the warning of Germany to stay off belligerent vessels and out of the war zone. John Bassett Moore stated to the Senate Foreign Relations Committee in 1936:

> We became involved in war directly as a result of our undertaking to guarantee the safety of belligerent merchantmen and our taking the position that armed belligerent merchantmen were to be considered as peaceful vessels.[53]

Secretary Bryan forsaw the coming of a crisis even before the Lusitania was sunk. After the sinking of the British steamship Falaba on March 28, when one American was lost, the State Department had been considering a sharp note of protest to Germany. He was conscious of the changing attitude of the American people toward both groups of belligerents. Bryans views toward making a protest to the Falaba sinking are expressed in a letter to the President.

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52 Seymour, op. cit., I, 406.

53 Hearings on S. 3474, Committee on Foreign Relations, U. S. Senate, 74 Cong., 2 sess. (January 10 - February 5, 1936), 185.

> The note which you propose will, I fear, very much inflame the already hostile feeling against us in Germany,...because of its contrast with our attitude toward the Allies. If we oppose the use of the submarine against merchantmen we will lay down a law for ourselves as well as Germany. If we admit the right of the submarine to attack merchantmen but condemn their ...acts as inhuman we will be embarrassed by the fact that we have not protested against Great Britain's defense of the right to prevent foods from reaching non-combatant enemies...I fear that denunciation of one and silence as to the other will be construed by some as partiality.[54]

As an alternative to sending a note Bryan suggested an appeal to the nations at war to consider terms of peace. He believed that all international disputes were capable of adjustment by peaceable means.[55] Since the beginning of the submarine campaign he had urged that Americans be warned against traveling on belligerent ships but Lansing and the President thought different. Lansing later admitted to Bryan that the government by its silence had led the American citizens who traveled on British ships, to believe that their government approved and would protect them in case their legal rights were invaded.[56]

The loss of 128 American lives in the sinking of the unarmed British liner Lusitania was a shock to the American people. A cry for war was raised in some circles. Colonel House, then in London, made an appeal to the President for a declaration of war.[57] But Wilson was still too proud to fight and like all true-hearted Americans, he hoped

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54 Mary (Baird) Bryan and William Jennings Bryan, Memoirs of William Jennings Bryan, 396-397.

55 Ibid.

56 Savage, op. cit., II, 309.

57 Seymour, op. cit., I, 432, 438.

that the United States would not be drawn into the war. After having calmed the clamor for war, the President drew up a note of protest to Germany which brought about the resignation of Bryan. The President considered the act as a violation of American rights on the high seas. The warning given to neutral ships to keep out of the war zone proclaimed by Germany is to be considered as an abbreviation of the rights of American shippers or of American citizens bound on lawful errands as passengers on belligerent merchant ships, and therefore the German Government must be held to a "strict accountability" for any infringement on those rights, whether intentional or accidental.

President Wilson further stated that submarines cannot be used without violating many sacred principles of justice.

> American citizens act within their indisputable rights in taking their ships and in traveling wherever their legitimate business calls them upon the high seas.[58]

The note closed with the demand for a disavowal of the sinking and reparation for the lives lost, together with an assurance against the loss of American lives or ships in the future.

Secretary Bryan refused to sign the note. He felt that the note would lead to war with Germany and that Great Britain should be held to equal accountability. He went so far as to suggest a note of protest to Great Britain against the illegal "blockade measures". He had also recommended that Americans should keep off belligerent ships. The attitude of Lansing and the President, coupled with the note to Germany brought about the resignation of Bryan.

Lansing was of the opinion that a warning to American citizens to

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58 Foreign Relations, 1915, Supplement, 394.

refrain from traveling on belligerent vessels would be dishonorable. In his Memoirs he says that such a warning

> ...would have been contrary to the dignity of the United States and would have been justly condemned in general, who were, as they always have been, jealous of their rights on the high seas, and who believed that it would be pusillanimous for our government not to insist that those rights should be respected whatever the consequences of such insistance.[59]

Wilson and Lansing were unwilling to admit that they had assumed a position which was vulnerable, but a change in policy now would be embarrassing to the government and weaken the protest to Germany.[60] The President refused Bryan's proposal of preventing American citizens to travel on belligerent vessels. He took the position that he could not assume so humiliating an attitude.[61]

The attitude of the President on making a protest to England at the same time that the Lusitania note was sent is revealed by Tumulty, the President's own private secretary. He reports that Woodrow Wilson agreed with Sir Edward Grey that:

> England is fighting our fight and you may well understand that I shall not, in the present state of affairs, place obstacles in her way.[62]

The Administration continued to defend the rights of American citizens to travel on British armed or unarmed vessels. This in reality was a defense of British vessels against enemy attack.

The nature of the work that Colonel House was doing in London, at

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59 Lansing, op. cit., 115.

60 Ray Stannard Baker, Life and Letters of Woodrow Wilson, V, 355.

61 Lansing, op. cit., 116.

62 Joseph Patrick Tumulty, Woodrow Wilson As I Know Him, 251.

the time of the vacancy in the State Department, and continued to do is revealed in a letter which he received from Sir Edward Grey:

> If as you think, the United States drifts into war with Germany, the influence of the United States in the general aspects of peace will be predominate and perhaps decisive... But the dilemma I foresee is that the desire of the people of the United States to keep out of war with Germany may lead to burying the Lusitania indefinitely, in which case Germany will disregard and the other belligerents will hope for little from American influence and the tendency will be to discount it.[63]

Regardless of the wide diversity of opinion concerning the personal motives of House in his clever manipulation of the foreign policy of the United States at this most critical period of American history, the Colonel was able to work upon the personal ambitions of the President for a League of Nations, notwithstanding the fact that he was outwitted at every turn by Grey, Lloyd George, and Balfour. House with the aid of Page did eventually succeed in maneuvering the President into a complete reversal of the policy stated in the proclamation of neutrality at the beginning of hostilities in Europe. Instead of a fair and impartial consideration of the Lusitania case President Wilson was committed to holding Germany to a "strict accountability" for attacks on British vessels, while at the same time, he allowed Great Britain to restrict the right of American citizens to carry on trade according to the established rules of international law.

> The partiality which Bryan had critized became an irrevocable policy under which neutrality was gradually submerged. The administration in effect fought the British case against the submarine, and entangled itself in the bargain. It lost, by its position, all opportunity to obtain relaxation of British illegalities.

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63 Seymour, op. cit., II, 5.

American intervention in the war was thereby foreordained.[64]

The loss of American lives on the Lusitania was a boon to the allied cause. The sympathy expressed by the British Government over the loss of American lives was overshadowed with joy at the German blunder. Ambassador Page considered the sinking of the Lusitania as a godsend for his war policy. The only thing that worried Page at this time was the extreme slowness with which the current of popular opinion in America carried Wilson into the bloody maelstrom of the European war, as an ally of Great Britain in name as well as in fact. At one time he expressed the hope that another Lusitania might be sunk in order to arouse the American people to the realization of their duty to join the Allies in the holy crusade to save civilization from destruction by the autocratic, militaristic powers of Central Europe.

On May 10, the German Government expressed its deepest sympathy for the loss of American lives; it placed responsibility on the British Government which, by preventing the importation of foodstuffs to the civilian population of Germany, had caused the German Government to resort to retaliatory measures. The note also raised doubtful questions concerning the Lusitania, namely, that it carried contraband, and that the British press had admitted that it was armed.[65]

The German reply to the American protest of May 13, merely gave a series of excuses as did the first note. It gave no suggestion that submarine warfare against enemy vessels would be abandoned. This irritated the President and he immediately drew up a second protest to

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64 Borchard and Page, op. cit., 164.

65 Foreign Relations, 1915, Supplement, 387.

Germany, read it to his cabinet and dispatched it on the ninth of June.[66] The President insisted on the application of the rules of the belligerent right of visit and search as recognized by international law; the very thing which he himself had admitted as an impossibility for submarines to follow in his first protest to Germany on May 15. In fact, the President's demand was that Germany should stop submarine warfare which was endangering the lives of non-combatant citizens. The fact that British merchant vessels were armed, used the flag of the United States in order to escape capture, and had orders to ram submarines on sight endangered the lives of American citizens as long as Germany continued submarine warfare.

The German note of July 8[67] and the American reply of July 21[68] added but little to the controversy. The Germans blamed the submarine campaign on Britain's efforts to starve Germany and illegally to stop her trade with the neutrals of Europe. They remarked that they were contending for freedom of the seas which the British were violating. President Wilson again stated that the Germans were violating that doctrine and that the United States would

> ...continue to contend for that freedom from whatever quarter violated, without compromise and at any cost.[69]

Lansing was even less cautious than the chief executive. He favored an uncompromising attitude toward Germany. He had already expressed the opinion that American citizens had the right to travel on British ships without endangering their lives. He believed in the invulnerability of

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66 Ibid., 436.

67 Ibid., 463.

68 Ibid., 480.

69 Ibid.

American citizens on British vessels, and that war was inevitable, if not indeed desirable. Lansing admits in his Memoirs that as early as July, 1915 he had concluded that:

> The German Government is utterly hostile to all nations with democratic institutions because those who compose it see in democracy a menace to absolutism and the defeat of the German ambition for world domination...Germany must not be permitted to win this war or to break even, though to prevent it this country is forced to take an active part. This ultimate necessity must be constantly in our minds in all controversies with the belligerents. American public opinion must be prepared for the time, which may come, when we will have to cast aside our neutrality and become one of the champions of democracy.[70]

Secretary Lansing gives at least one reason for his insincere defense of American neutrality by stating:

> ...in dealing with the British there was always in my mind the conviction that we would ultimately become an ally of Great Britain.[71]

After the last Lusitania note of July 21, German submarine warfare subsided temporarily. That last note had caused the German Admirality to hesitate because Wilson had so framed the note that a failure to abandon submarine warfare would cause a break with the United States. In Germany, a struggle was fought behind the scenes between the civil and naval authorities whether submarine warfare was worth the risk of bringing the United States into the war. The former thought American intervention must be avoided. It seems that the naval authorities had been induced to avoid the sinking without warning of large passenger liners.

The issue was again presented by the sinking without warning of the

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70 Lansing, op. cit., 19.

71 Ibid., 128.

British liner Arabic in August, 1915, with the loss of two American lives. Colonel House again suggested immediate declaration of war against Germany. However, public opinion in the southern part of the United States was aroused by a further invasion of neutral rights by Great Britain, the inclusion of cotton on the contraband list. To satisfy the revolt in Congress the Administration was forced to send protests to England. To Senator Simmons of North Carolina, President Wilson expressed his reluctance to

> ...press our neutral claims against Germany and Great Britain at one and the same time and so make our situation more nearly impossible.[72]

The United States Secretary of State, while leaving the country and Congress under the impression that he was defending American neutral rights under international law, privately recorded the fact that he was not only seeking to protect Great Britain against the legitimate complaints of the United States, but was also keeping the way open to enter the war on the side of the Allies. Unneutrality had made rapid strides since the resignation of Bryan. Lansing, after his protest to England on October 21, 1915, was willing to confess:

> Sympathetic as I felt toward the Allies and convinced that we would in the end join with them against the autocratic governments of the Central Empires, I saw with apprehension the tide of resentment against Great Britain rising higher and higher in this country. It was becoming increasingly difficult to avoid bringing the controversies between our two governments to a head and to keep from assuming positions which went beyond the field of discussion. I did all that I could to prolong the disputes ...in the hope that before the extended interchange of arguments came to an end something would happen to change the current of American public opinion or to make the

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72 Baker, op. cit., V, 367.

> American people perceive that German absolutism was a menace to their liberties and to democratic institutions everywhere. Fortunately this hope and effort were not in vain. Germany did the very thing which she should not have done. The tide of sentiment in the United States turned, and it was possible to prevent a widespread demand being made that the Allied Powers be "brought to book" without further delay for their illegal treatment of our commerce.[73]

He adds further:

> Sifted down to the bare facts the position was this: Great Britain insisted that Germany should conform her conduct of naval warfare to the strict letter of the rules of international law, and resented even a suggestion that there should be any variation of the rules to make them reasonably applicable to new conditions. On the other hand, Great Britain was herself repeatedly departing from the rules of international law on the plea that new conditions compelled her to do so, and even showed resentment because the United States refused to recognize her right to ignore or modify the rules whenever she thought it necessary to do so. Briefly, the British Government wished international law enforced when they believed that it worked to the advantage of Great Britain and wished the law modified when the change would benefit Great Britain. There is no doubt that the good relations between the United States and Great Britain would have been seriously jeopardized by this unreasonable attitude, which seems unworthy of British statesmanship, except for the fact that British violations of law affected American property while the German violations affected American lives.[74]

During the controversy over the sinking of the Arabic the Germans were in a dilemma and so was the Wilson Administration. The British Ambassador, Spring Rice, sought to appease the South by offering to purchase cotton at ten cents a pound.[75] The German Ambassador, Bernstorff, stated that the loss of American lives was contrary to German intentions

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73 Lansing, op. cit., 110-111.

74 Ibid., 111-112.

75 Seymour, op. cit., II, 60.

and announced to Secretary Lansing on September 1 that "liners" would not be sunk without warning and without providing for the safety of the lives of non-combatants providing the vessels did not resist or try to escape.[76] The question that remained was, what distinction would Germany make between a "liner" and other vessels when practically all ships carried contraband. Only three days later the German Ambassador notified the United States that neutral passengers could not expect immunity, as it would be impossible for a submarine to exercise with such vessels the operation of preliminary visit and search. The sinking of the Italian steamer Ancona and the British steamer Persia in the fall of 1915 intensified the controversy with Germany still more.[77] The number of American lives lost in the Ancona is somewhat uncertain, possibly nine, while in the Persia sinking the life of an American consul was lost.

Two weeks before House sailed to Europe on his second mission that "probably" would create the necessity for the United States "to join the Allies and force the issue", President Wilson delivered a touching address to Congress. On the surface, this address appears to be inconsistent with the intent of the House mission. A close examination of the context, however, shows the message to be permeated with the idea of political and economic world-leadership for the United States. Among other things the President said:

> We have stood apart studiously neutral. It was our manifest duty to do so...that some part of the great family of nations should keep the processes of peace alive, if only to prevent collective economic ruin and the breakdown of world industries...

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76 Foreign Relations, 1915, Supplement, 530-531.

77 Ibid., 611, 646, 655-658.

> Something must be done at once to open trade routes and develop trade...as yet undeveloped; to open arteries of trade where the currents have not yet learned to run...
>
> ...we should see to it (the Government of the United States) lacks no vigor of law, to make it sufficient to play its part with energy, safety, and assured success.[78]

Baker expresses the view that the President was sincere in his expressions; that he considered the part of the United States was merely to bring about mediation. As an opening for mediation the proposal of Grey for a League of Nations would be the proper method of approach.[79] Colonel House was working at cross purposes with the President. His plan was not to bring about mediation but rather to arrange for American intervention to force the issue with Germany.[80]

House went to Europe without any specific instructions in regard to the task of making the Allies understand that "we considered their cause our cause". It was imperative that some sort of definite understanding be reached before the dissatisfaction in the senate culminated in open revolt, at the policy of the State Department in allowing the Entente to continue restrictions on neutral trade. Allied propaganda had accomplished the desired effect on the President, that it was his duty to lead the United States into the war to bring about a post-war world free from aggressive warfare and to enforce peace through a collective agency such as the League of Nations. President Wilson considered his election to the presidency as an opportunity to carry out certain personal theories in regard to government. He seems to have

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78 Ibid., 9-24.

79 Baker, op. cit., V, 137.

80 Seymour, op. cit., II, 114.

been intensely interested in his own career.

According to Baker the President made it plain to House that the Senate demanded immediate and firm pressure upon the British in the matter of interference of American rights to trade. But, instead of committing himself to put the pressure on the Allies, House sailed to Europe to offer the help of the United States in those larger conditions of peace, which, looking to the future, interest neutrals as much as belligerents.[81]

There is no doubt that House gave tacit assurance to the President that his wishes would be carried out to the letter; neither is there the slightest room to doubt that the Colonel intended to carry on negotiations in his own way. Baker doubts whether there ever was a real meeting of the two minds. It would have been safer for Wilson to trust his State Department.[82]

Colonel House arrived in London early in January, 1916. Instead of carrying out the wishes of the President to bring pressure to bear on the British in regard to the matter of interference with neutral trade, he learned that his mind ran parallel to that of Grey and Balfour. He had learned that Grey was in favor of "freedom of the seas" to be established after the conclusion of the war, provided the United States would join in a covenant to sustain it. House had in mind the immunity of all private property on the high seas. He soon learned that Grey did not believe in the freedom of the seas to that extent but rather

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81 Baker, op. cit., VI, 139.

82 Ibid., 140.

the establishment of the traditional rights of neutrals, if Germany entered "some League of Nations where she would give and accept the same security against war as did other nations".[83] Britain feared that "freedom of the seas" would strike the weapon of sea power out of British hands.[84] Britain's coolness for freedom of the seas was overshadowed by her enthusiasm for a post-war organization to insure peace and observance of maritime law, especially the rights of neutrals, by force. With this idea House converted Wilson to the idea that Great Britain favored the freedom of the seas.[85] On January 11, 1916, Colonel House records a conference he held with the British leaders in which they asked "what the United States wished Great Britain to do". To this Colonel House replied:

> The United States would like Great Britain to do those things which would enable the United States to help Great Britain win the war.[86]

From that moment, the British Government was complete mistress of the situation. Balfour and Grey had learned what they had been trying for months to discover, just how far the United States would go in helping the Allies win. Colonel House had completely surrendered American interests of neutrality to the foreign policy of Great Britain. The United States was pledged to intervene on behalf of the Allies if the Central Powers failed to accept the terms of peace suitable to the Allies. With this in mind Colonel House was permitted to go to Berlin

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83 Seymour, op. cit., II, 87, 425.

84 Ibid., 79-80.

85 Ibid., I, 117.

86 Ibid., II, 124.

to press the issue.

At this critical period in American diplomacy, the official forces of the administration were divided three ways. Wilson was working for peace, House was trying to embroil the United States on the side of the Allies, and the State Department tried to work out a solution that would protect the rights of neutrals.

The Secretary of State, Lansing, realized the helpless situation of neutral shipping and American passengers on British armed vessels. At the beginning of the war British armed merchant vessels had been permitted to enter American harbors, based on the contention that they were armed for defensive purposes only. By the end of 1915 Lansing's position was somewhat changed because information had come to the State Department that British merchant vessels had used their arms for offensive purposes against submarines. On January 2, 1916, Lansing wrote to Wilson and pointed out the necessity for the revision of the 1914 ruling because of,

> ...the impossibility of a submarine's communicating with an armed merchant ship without exposing itself to the gravest danger of being sunk by gunfire because of its weakness defensively, and the unreasonableness of requiring a submarine to run the danger of being almost certainly destroyed by giving warning to a vessel carrying an armament...[87]

On account of the changed situation he suggested that merchant vessels discontinue carrying guns, and if they continued to arm, they were to be classed as vessels of war and liable to treatment as such

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87 Savage, op. cit., II, 430-431.

by both belligerents and neutrals.[88]

The arming of some vessels exposed all of them to the same danger according to Lansing's opinion.

> The chief difficulty with the situation seems to me to lie in this: If some merchant vessels carry arms and others do not, how can a submarine determine this fact without exposing itself to great risk of being sunk? Unless the Entente Allies positively agree not to arm any of their merchant vessels and notify the Central Powers to that effect, is there not strong reason why a submarine should not warn a vessel before launching an attack?[89]

On January 18, 1916, Secretary Lansing proposed to the Allies that they remove their guns from their commercial vessels in return for a German pledge not to torpedo merchantmen without visit and search and provisions for the safety of crew and passengers. Secretary Lansing contended that the submarine was not an unlawful instrument of warfare because it had proved its effectiveness and that international law would have to be modified accordingly. Before 1915 belligerent operations against enemy commerce had been conducted by cruisers. Under these conditions international law appeared to permit a merchant vessel to arm for defensive purposes without losing its character as a private commercial vessel.[90] Concerning this position of Lansing on the status of armed merchantmen Hyde says:

> It is believed that the Secretary of State sought to formulate no new principle of law, but rather to gain recognition of the inapplicability of an old rule to existing conditions of maritime warfare, which were at variance with the theory on which the rule was based, and that he endeavored to encourage a practice both in

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88 Ibid., II, 430-431.

89 Ibid., 431-432.

90 Foreign Relations, 1916, Supplement, 146-148.

> harmony with that theory and responsive to the requirements of justice. Nor did his proposal indicate the abandonment of any neutral rights.[91]

In the light of the world war experience, Hyde has summarized international law on the arming of merchant vessels as follows:

> The merchantmen, when equipped with a gun of great destructive force and long range, becomes itself a valuable weapon of offense...although its chief mission be the transportation of passengers and freight, it becomes necessarily a participant in the conflict. ...the equipment of a belligerent merchant marine for hostile service, even though defensive rather than offensive, serves, on principle, to deprive the armed vessel of the right to claim immunity from attack without warning.[92]

Contrary to international law the United States had contended that an armed merchant vessel did not lose its former character and that they were immune from attack by submarines because the merchantmen had American citizens among her passengers or crew.

Secretary Lansing's proposal to disarm merchantmen was the high point of the American effort at neutrality. It was sound and unassailable, if adhered to, but it was short lived. Page pictured it as a complete victory for Germany if carried out. He feared that the United States had lost considerable influence with the Allied governments. Every possible method of retraction was employed by the British Government. As a spectator John Bassett Moore reports the incident as follows:

> I recall, as if it were yesterday, what happened when it was suggested here that armed merchantmen should be put under belligerent restrictions. The British Government, or some of its spokesmen, suggested that, if we

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91 Charles Cheyney Hyde, International Law, II, 467.

92 Ibid., 405, 471.

> did this, British ships would cease to come to our ports, and that we should have to send everything to Halifax. Immediately we ran to cover, and submitted. Of course I do not blame the British Government. They were not charged with the maintenance of the independence and honor of the United States.[93]

Evidently Judge Moore had reference to the unneutral activities of Page and House. Lansing's proposal had largely interfered with the efforts of House to bring about American intervention in the war. Colonel House returned from Europe loaded with arguments from the British leaders against the proposal to disarm merchant ships. On March 3, he had his first conference with the President. The President blamed himself and Lansing had to find a way out. His opportunity came when Germany on February 10, announced that enemy merchant vessels armed with cannon no longer had any right to be considered as "peaceable vessels of commerce".[94] The administration had admitted that its former position on armed merchant vessels had been wrong and now it was forced to withdraw the proposal that was supposed to correct it. The proposal may have served the purpose of letting the American people know that the government was sincerely trying to be neutral at this critical time and that the country was not led into the war as a result of sheer propaganda.

There was nothing left for the administration to do but to firmly uphold its policies that it had announced repeatedly. It could not easily retreat from the position that armed vessels were peaceful traders

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93 Hearings on S. 3474, Committee on Foreign Relations, U. S. Senate, 74 Cong., 2 Sess. (January 10 - February 5, 1936), 185.

94 Foreign Relations, 1916, Supplement, 166-167.

and that Americans had a right to travel on belligerent vessels. At Topeka on February 2, 1916, in the Preparedness Campaign, the President had urged the need to protect and safeguard "the rights of Americans no matter where they might be in the world".[95]

The administration was further embarrassed by the introduction into Congress of the Gore and McLemore Resolutions to prohibit the issuance of passports to American citizens against taking passage on armed belligerent merchantmen. These were opposed by the administration leaders. To a letter of criticism that Senator Stone had written the President on February 24 he replied:

> ...I cannot consent to any abridgment of the rights of American citizens in any respect. The honor and self-respect of the nation is involved. We covet peace, and shall preserve it at any cost but the loss of honor. To forbid people to exercise their rights for fear we might be called upon to vindicate them would be a deep humiliation indeed. It would be a deliberate abdication of our hitherto proud position as spokesman...for the law and the right...Once accept a single abatement of right, and many other humiliations would certainly follow, and the whole fabric of international law might crumble under our hands piece by piece. What we are contending for in this matter is of the very essence of the things that have made America a sovereign nation. She cannot yield them without conceding her own impotency as a nation and making virtual surrender of her independent position among the nations of the world.[96]

The President upheld the rights of Americans anywhere at the risk of war. The Gore-McLemore Resolutions in reality amounted to a test of the President's power to lead Congress. He immediately called for a vote and brought about their defeat. The majority of the members

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95 Baker and Dodd, op. cit., II, 89.

96 Foreign Relations, 1916, Supplement, 177-178.

of both houses were in favor of giving the President a free hand to carry on his diplomacy in his own way.

On March 25, 1916 the State Department officially withdrew the Lansing proposal and the President made a new announcement as to the attitude of the United States toward armed merchant vessels.[97] It required a belligerent's warship to determine the status, warlike or peaceful, of an armed enemy merchant vessel encountered at sea; warlike character must rest not on presumption but upon conclusive evidence, arms apparently no longer constituting evidence of warlike character, an armed merchant vessel in the absence of aggressive purpose is entitled to the rights of an unarmed vessel; an armed merchantman cannot be attacked without regard to the lives of persons on board; a warship on the high seas can test by experience the purpose of an armament and in that way determine whether a merchantman was armed for "aggressive purposes" or for "defensive purposes". The old rule of September, 1914 was revived and made more illusionary than before.

The sinking of the French Channel steamer Sussex on March 24, 1916 made a break in diplomatic relations between Germany and the United States emminent. It was torpedoed without warning. No American lives were lost, but a few Americans were injured. The sinking of the Sussex meant the breaking of solemn pledges to the United States. Some of the Ambassadors prepared to come home.

The Government of the United States on April 18, 1916 sent a sharp note of protest to submarine attacks as incompatible with the principles of humanity, the established rights of neutrals and the

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97 Ibid., 244-248.

sacred rights of non-combatants. In presenting the case of the Sussex it declared:

> If it is still the purpose of the Imperial Government to prosecute relentless and indiscriminate warfare against vessels of commerce by the use of submarines without regard to what the Government of the United States must consider the sacred and indisputable rules of international law and the universally recognized dictates of humanity the Government of the United States is at last forced to the conclusion that there is but one course it can pursue.
>
> Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether.[98]

Germany was finally called upon to abandon the use of the submarine against all merchant vessels, belligerent as well as neutral or suffer the consequences, American intervention. The British Government refused to accept the President's offer of mediation because German submarine policy would drive the United States into the war on the side of the Allies. Grey and Balfour felt that there was no need of a peace conference to draw up terms suitable to the Allies which Germany was expected to refuse and then the United States would "probably" join the Allies. When House made the proposal to the Allies he left out the word "probably" which some historians think was inserted by Wilson. The sinking of the Sussex suggested to the Allies that American intervention was only a matter of time. The German Government, for the time being, suppressed the idea that unrestricted submarine warfare would be conclusive and made a sweeping promise to restrain the use of the submarine as a commerce destroyer. Germany felt that she was once more

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98 Ibid., 232-234.

yielding her rights to conciliate the United States. The German reply, known as the "Sussex pledge" came on May 4. It instructed the United States that the German naval forces had received the following orders:

> In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law, such vessels, both within and without the area declared as naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance.[99]

The note added that neutrals can not expect Germany, who is forced to fight for her existence, for the sake of neutral interests, to restrict the use of an effective weapon if her enemy is permitted to continue to apply at will methods of warfare violating the rules of international law. Further, the note made a reservation which Wilson was unwilling to accept. It stated that if the President should be unable to obtain from Great Britain a respect for "the rules of international law universally recognized before the war" the German Government would then be facing a new situation in which it must reserve to itself complete liberty of decision.[100]

In his reply on May 8, the President reasserted the position taken in the Lusitania note that the Government of the United States

> ...cannot for a moment entertain, much less discuss, a suggestion that respect by German naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made contingent upon the conduct of any other government affecting the rights of neutrals and non-combatants. Responsibility in such matters is single, not joint; absolute, not relative.[101]

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99 Ibid., 257-259.

100 Ibid.

101 Ibid., 263.

Thus the President reserved the right to deal with each belligerent individually. Violations by each belligerent of neutral rights were distinct affairs and the United States was privileged to take a different attitude toward each without impairing neutrality. This discrimination was later clarified by the President as resting on the difference between the loss of life and the loss of property. This policy made it possible for the administration to moderate its protests to Great Britain while it held Germany to strict accountability. Germany's response to the demands of the President convinced him that his policy was flawless. Colonel House and President Wilson regarded the "Sussex pledge", as a complete victory for the United States but it merely sealed the contract providing for American intervention.

During the spring of 1916 the Presidential campaign got under way. The campaign was fought chiefly on the issue of the defense of American rights and the slogan "He kept us out of War". The President's position was strengthened by two important victories--the defeat of the Gore-McLemore Resolutions and the Sussex pledge. A temporary cessation of submarine activity during the summer of 1916 gave strength to the Democratic claim that President Wilson had forced Germany to mend her ways. Allied refusal of the President's plans for peace caused the President to take a more neutral stand which appeased that element of the American population opposed to war.

After his reelection on December 12, Germany asked the President for his good offices to bring about peace. The President was willing and set for his last great peace drive. He was still confident that "logic could be made to prevail". The peace he had in mind, however, to satisfy the purpose of his country, had little resemblance to that

desired by the Central Powers, and pledged among themselves by the Allies. Instead of proposing a peace that would satisfy the nationalistic aspirations of either group of belligerents, President Wilson had his mind set on a peace that would settle world affairs and make the world safe from future wars, with himself as the mediator. Soon after his election the President had set himself to the task of drafting a circular note providing for a negotiated peace. In this note, he asked the belligerents to state their war aims. Colonel House and Page were opposed to the President's move. After Germany announced its willingness to negotiate the President worked harder than ever.

The Wilson note brought down on the head of the President a terrific storm of criticism and protest. In England the proposal fell on barren soil, for his influence now was limited, as Page had earlier suggested, to his expected aid as a belligerent. His helpfulness as a mediator was hardly desired. According to Seymour:

> The Allies refused to negotiate on the ground that a durable peace presupposed a satisfactory settlement of the conflict and at the moment it was hopeless to expect from the Central Powers the reparation, restitution, and guarantees necessary for such a peace. They challenged Wilson's analogy of the war aims of the two groups...They met...request for a statement of peace terms with an uncompromising declaration... which seemed to end the possibility of negotiations.[102]

Page sadly deplored the fact that the suggestion of the President came at such an inopportune time as to make the Allies feel that he was too sympathetic with the cause of the Central Powers. In his efforts to make the President feel sufficiently conscious of the enormity of his blunder, Page went on to say that he had heard from a luncheon

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102 Seymour, op. cit., II, 406.

guest that the King had wept with surprise and sorrow at the suggestion of the circular of the President, which the British interpreted as meaning that Wilson placed the Central Powers and the Allies on the same level.

According to Grey, the prolongation of the war after December, 1916, was the result of unnecessary bungling of diplomatic affairs of more than one of the powers involved because:

> In the light of after events it is clear that Germany missed a great opportunity of peace. If she had accepted the Wilson policy, and was ready to agree to the conference, the Allies could not have refused. They were dependent on American supplies, they could not have risked the ill-will of the Government of the United States, still less re-approachment between the United States and Germany.[103]

This admission places a great deal of responsibility on House, Page, and Lansing for their unneutral handling of American diplomacy at a time when they should have been doing everything in their power to aid the President in putting over his plan for a negotiated peace. Wilson took matters in his own hands in December, 1916 and from then on, until the very eve of the break with the Central Powers, he worked with persistent determination to preserve the neutrality of the United States. Seymour says:

> Wilson's pacifism had been intensified by the events of the year. Previous to 1916, his sympathies, although carefully concealed, were strongly with the Allies...But the refusal to accept his proffered intervention aroused his suspicions of their motives and led him to fear that...if we brought them military assistance, it would be used merely to further European nationalistic aspirations. He distrusted intensely the real purpose of all the belligerent Governments, whatever their avowed war aims. He was equally affected by

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103 Grey, op. cit., II, 135.

> the course of the electoral campaign, which convinced him that he owed his reelection largely to the votes of those who counted upon him to keep them out of war. He regarded the mandate of peace compelling.[104]

Unfortunately the President had waited too long to begin his active campaign to maintain neutrality. His unyielding attitude toward Germany, which had resulted in his ultimatum in regard to the resumption of submarine warfare had taken the power of preserving peace out of his hand. Internal conditions in Germany caused by the British blockade measures influenced the German Government to announce on January 31, 1917 unrestricted submarine warfare.

The failure of peace discussions, according to the interpretation of the German Government, gave her "freedom of action" reserved in the Sussex note to meet the illegal measures of her enemies by:

> ...forcibly preventing after February 1, 1917, in a zone around Great Britain, France, Italy, and in the eastern Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc. All ships met within the zone will be sunk.[105]

President Wilson's appeal for "peace without victory" fell on stony ground. The President had no choice left except to back down from the firm stand he had taken previously or fight to the finish. He chose the latter. His immediate response to the German challenge was the severance of diplomatic relations. On February 3, the President went before Congress and reviewed the diplomatic correspondence which had led to the break. He again reasserted his reservation attached to the Sussex note that "the rights of American citizens upon the high

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104 Seymour, op. cit., II, 413.

105 Naval War College, International Law Documents (1917), 112.

seas" are not contingent upon the conduct of any other government. Although he informed Congress that diplomatic relations were severed, he still gave the impression that he thought hostilities might be avoided.

Wilson still hoped that Germany would not in fact resort to its announced intentions. But Germany paid little heed for she intended to end the war before American aid to the Allies would become effective. The President now turned to "Armed neutrality". He asked Congress for power to arm merchant vessels but "Twelve wilful men" stood in his way. Wilson decided to arm American merchant vessels without the consent of Congress. At first, arms were provided for American neutral vessels but no United States naval officers were placed in charge. Here, the President was running a great risk. Neutral vessels were undertaking to fire on belligerents, a privilege not open to neutrals. If they proceeded to do so, even under provocation and in self-defense, the act would constitute piracy and leave the neutral without legal redress.

In order to avoid more serious complications, the Government assumed full responsibility for the armed merchant ships by placing naval men in charge of the firing of the guns. Under these circumstances the firing would be legal, but would constitute an act of war. The President, therefore, appeared before Congress and demanded recognition of the fact that the acts of the German Government constituted war against the United States. And thus ended the fight for "neutrality in fact as well as in name."

On April the 2nd the President, appeared before Congress and demanded recognition of the state of war thrust upon the United States by the "overt acts of Germany". He rejected the German plea for

retaliation and insisted that the motive of the United States was only the vindication of the rights of humanity. Vessels of all kinds, without regard to cargo, flag, character, destination, or errand, had been attacked and sunk without warning. The President condemned the German submarine warfare as a belligerent move against all nations, and a challenge to all mankind. He even appealed to neutral nations to meet the present challenge. The insistence of the German Government that it be allowed to resort to unrestricted submarine warfare in order to break the British blockade was responsible for the entry of the United States into the gigantic struggle.

The President pictured the entrance of the United States as a great crusade for peace. He said:

> Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth insure the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved...We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.[106]

He closed his war message with the following words:

> It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance. But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts--for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion

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106 Foreign Relations, 1917, Supplement, 226.

> of right by such a concert of free peoples as shall bring peace and safety to all nations and to make the world itself at last free.[107]

In listing his famous "fourteen point" program President Wilson stated:

> ...The program of the world's peace, is our programme; and that programme, the only possible programme, as we see it is this:
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> II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.[108]

President Wilson was sorely disappointed when he found out that the basis for the peace treaty in 1919 would be the secret treaties and war aims of the European Allies. Yet he was willing to say that "The object of the war is attained; Armed imperialism is at an end. The arbitrary power of the military caste of Germany is discredited and destroyed." The best that he could do was to include in the treaty the League of Nations, an association of nations dedicated to mutual cooperation for the prevention of new wars and to the punishment of an "aggressor". The theory of collective enforcement of peace embodied in the covenant of the League of Nations led Wilson to say that "neutrality is a thing of the past."

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107 Ibid.

108 Address of President Wilson to Congress, H. Doc. No. 765, 65 Cong., 2 sess (January 8, 1918), 5.

Conclusions

The principles of neutrality have arisen out of a long historic controversy between belligerents and neutrals. A significant contribution of the development of neutrality was made by the United States under Washington and Jefferson. The United States insisted that belligerents should respect its neutral rights in return for its fulfillment of the duties of neutrality. In the development of the theory that a neutral has certain duties to perform while other nations are at war the United States has had a leading part. It has also been one of the most ardent advocates of the rights of neutrals during foreign wars.

The birth of a new nation in Europe has, as a rule, had little effect on international law or relations. In the case of the United States it was different. The child of a new philosophy of government, located three thousand miles away from Europe, with a determination to remain free from that European system which had made the colonists the cause and always the victims of the European struggles for political and commercial supremacy, the new nation had reasons and opportunities for developing new theories of international law. Economic interests have caused the United States to play the chief role of a neutral trade carrier preceeding the War of 1812 as well as the World War period of 1914-1917.

The controversies leading to the war of 1812 have become mere history being superseded by greater ones during the World War. It was the story of a young republic seeking, as Jefferson described it, to maintain an "honest neutrality", but the belligerents would not permit. President Madison prematurely declared war against the nation that had

done the United States the least harm. Woodrow Wilson, another Princeton man, was determined not to make this same mistake. During the Napoleonic wars the United States did not join any one of the parties of the conflict as it did after the proclamation of neutrality during the World War. During the World War the United States maintained the view that neutrality was worth while for a few years and then abandoned it for a status of partiality and finally to that of a belligerent. Throughout history, neutrality has been as possible, as moral, and as impartial as belligerents as well as neutrals have allowed it to be.

President Wilson, at the beginning of the war, placed neutrality not alone on an official, but also on a personal, moral, and intellectual basis. The President, in urging personal as well as official neutrality on the part of the people of the United States may have gone too far. Presidents cannot control the thoughts of people. To urge official neutrality, however, was within his clear right, and indeed was his official duty. Unneutral thought induced unneutral conduct in the end.

When war was declared, Wilson justified abandonment of neutrality on high moral grounds by saying that "neutrality is no longer feasible or desirable where the peace of the world and the freedom of its peoples are involved." The whole international community must put an end to lawlessness. Wilson was convinced that it was not the German people but their military leaders who were responsible for the war. The participation of the United States had as its object "to make the world safe for democracy". The United States did not enter the war in defense of its technical neutral rights, although the loss of lives was a definite factor, but in defense of the right of all nations to be free from the disruptive effects of war. To live in peace has always been

a part of the United States foreign policy.

The greatest opponent of the United States neutrality policy during the World War was Walter Hines Page, American Ambassador to England. To Page neutrality was a nightmare. No man, he said, could be neutral; to him neutrality was a quality of government. The President and the Government, in insisting on the moral side of neutrality, missed "the larger meaning of the war".

Since the German fleet was not in action, the leading violations of American neutral rights were committed by Great Britain. Of the entire body of neutral maritime rights, few rules went through the World War without being violated, or as the Allies said, "extended", "interpreted" or "brought up to date". Sir Edward Grey wrote later that "The Navy acted and the Foreign Office had to find the argument to support the action; it was anxious work."

During the World War belligerents upset the balance of neutral and belligerent rights, so laborously developed over several centuries, and revived the twelfth century concept of banning almost all commerce with the enemy, denying the distinction between combatants and non-combatants. The difference between absolute and conditional contraband was wiped out. Neutral as well as enemy ports were blockaded. Neutral ships were sunk without warning. The doctrine of continuous voyage was distorted. The United States engaged Great Britain in a long diplomatic controversy over the calculated disregard of neutral rights. The British answer was that "changed conditions" justified a belligerent in modifying international law and adapting it to modern conditions. After 1917 the United States ceased to press the issue of neutral rights but it was careful to avoid the inference that it had waived or abandoned its

position. Since the war no successful effort has been made to clarify the rights of neutrals and belligerents.

The League of Nations which was created as a result of the war has at least altered if not destroyed the old concept of neutrality. The application of sanctions placed the stamp of moral approval on the Allied cause, and actually constituted war in the old sense, but a just war against an "aggressor".

The reasons for American intervention in the last war are varied. Woodrow Wilson's official biographer, Baker, has recently expressed the belief that it was the traffic in war materials which made it impossible for the United States to keep out of war "by the diplomacy of neutrality". The real reason for the United States entrance was the refusal of the American people to acquiesce in the German submarine campaign. The loss of property could be paid for but not the loss of lives. One of the fundamental reasons was that the United States would not tolerate the defeat of European democracies by imperialist Germany. The world would be safer with England in control of the seas.

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