

practicable in face of an enemy possessing the means and opportunity to make an effective defence 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 the established rules of war. If the necessities of the case should seem to render it imperative that the cordon of blockading vessels be extended across the approaches to any neighboring neutral port or country, it would seem clear that it would still be easily practicable to comply with the well-recognized and reasonable prohibition of international law against the blockading of neutral ports by according free admission and exit to all lawful traffic with neutral ports through the blockading cordon. This traffic would of course include all outward-bound traffic from the neutral country and all inward-bound traffic to the neutral country except contraband in transit to the enemy. Such procedure need not conflict in any respect with the rights of the belligerent maintaining the blockade since the right would remain with the blockading vessels to visit and search all ships either entering or leaving the neutral territory which they were in fact, but not of right, investing.

The government of the United States notes that in the order in council His Majesty's government give as their reason for entering upon a course of action, which they are aware is without precedent in modern warfare, the necessity they conceive themselves to have been placed under to retaliate upon their enemies for measures of a similar nature, which the latter have announced it their intention to adopt and which they have to some extent adopted; but the government of the United States, recalling the principles upon which His Majesty's government have hitherto been scrupulous to act, interprets this as merely a reason for certain extraordinary activities on the part of His Majesty's naval forces and not as an excuse for or prelude to any unlawful action. If the course pursued by the present enemies of Great Britain should prove to be in fact tainted by illegality and disregard of the principles of war sanctioned by enlightened nations, it can not be supposed, and this government does not for a moment suppose, that His Majesty's government would wish the same taint to attach to their own actions or would cite such illegal acts as in any sense or degree a justification for similar practices on their part in so far as they affect neutral rights.

It is thus that the government of the United States interprets the language of the note of His Majesty's principal secretary of state for foreign affairs which accompanies the copy of the order in council which was handed to the ambassador of the United States near the government in London and by him transmitted to Washington.

This government notes with gratification that "wide discretion is afforded to the prize court in dealing with the trade of neutrals in such manner as may in the circumstances be deemed just, and that full provision is made to facilitate claims by persons interested in any goods placed in the custody of the marshal of the prize court under the order;" that "the effect of the order in council is to confer certain powers upon the executive officers of His Majesty's government;" and that "the extent to which these powers will be actually exercised and the degree of severity with which the measures of blockade authorized will be put into operation are matters which will depend on the administrative orders issued by the government and the decisions of the authorities especially charged with the duty of dealing with individual ships and cargoes according to the merits of each case." This government further notes with equal satisfaction the declaration of the British government that "the instructions to be issued by His Majesty's government to the fleet and to the customs officials and executive committees concerned will impress upon them the duty of acting with the utmost despatch consistent with the object in view, and of showing in every case such consideration for neutrals as may be compatible with that object, which is, succinctly stated, to establish a blockade to prevent vessels from carrying goods for or coming from Germany."

In view of these assurances formally given to this government, it is confidently expected that the extensive powers conferred by the order in council on the executive officers of the Crown will be restricted by "orders issued by the government" directing the exercise of their discretionary powers in such a manner as to modify in practical application those provisions of the order in council which, if strictly enforced,

would violate neutral rights and interrupt legitimate trade. Relying on the faithful performance of these voluntary assurances by His Majesty's government the United States takes it for granted that the approach of American merchantmen to neutral ports situated upon the long line of coast affected by the order in council will not be interfered with when it is known that they do not carry goods which are contraband of war or goods destined to or proceeding from ports within the belligerent territory affected.

The government of the United States assumes with the greater confidence that His Majesty's government will thus adjust their practice to the recognized rules of international law, because it is manifest that the British government have adopted an extraordinary method of "stopping cargoes destined for or coming from the enemy's territory," which, owing to the existence of unusual conditions in modern warfare at sea, it will be difficult to restrict to the limits which have been heretofore required by the law of nations. Though the area of operations is confined to "European waters including the Mediterranean," so great an area of the high seas is covered and the cordon of ships is so distant from the territory affected that neutral vessels must necessarily pass through the blockading force in order to reach important neutral ports which Great Britain as a belligerent has not the legal right to blockade and which, therefore, it is presumed she has no intention of claiming to blockade. The Scandinavian and Danish ports, for example, are open to American trade. They are also free, so far as the actual enforcement of the order in council is concerned, to carry on trade with German Baltic ports, although it is an essential element of blockade that it bear with equal severity upon all neutrals.

This government, therefore, infers that the commanders of His Majesty's ships of war engaged in maintaining the so-called blockade will be instructed to avoid an enforcement of the proposed measures of non-intercourse in such a way as to impose restrictions upon neutral trade more burdensome than those which have been regarded as inevitable when the ports of a belligerent are actually blockaded by the ships of its enemy.

The possibilities of serious interruption of American trade under the order in council are so many, and the methods proposed are so unusual and seem liable to constitute so great an impediment and embarrassment to neutral commerce that the government of the United States, if the order in council is strictly enforced, apprehends many interferences with its legitimate trade which will impose upon His Majesty's government heavy responsibilities for acts of the British authorities clearly subversive of the rights of neutral nations on the high seas. It is, therefore, expected that His Majesty's government having considered these possibilities will take the steps necessary to avoid them, and, in the event that they should unhappily occur, will be prepared to make full reparation for every act, which under the rules of international law constitutes a violation of neutral rights.

As stated in its communication of October 22, 1914, "this government will insist 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, by the authorities of the British government.

In conclusion you will reiterate to His Majesty's government that this statement of the views of the government of the United States is made in the most friendly spirit, and in accordance with the uniform candor which has characterized the relations of the two governments in the past, and which has been in large measure the foundation of the peace and amity existing between the two nations without interruption for a century.

BRYAN.

THE GERMAN AMBASSADOR TO THE SECRETARY OF STATE
(Translation)

Imperial German Embassy,
Washington, April 4, 1915.
Mr. Secretary of State:

I have the honor to deliver to Your Excellency the enclosed memorandum on German-American

trade and the question of delivery of arms.
Accept, etc., J. BERNSTORFF.

(Memorandum)

Imperial German Embassy,
No. A2841.] Washington, D. C., April 4, 1915.

The various British orders in council have one-sidedly modified the generally recognized principles of international law in a way which arbitrarily stops the commerce of neutral nations with Germany. Even before the last British order in council, the shipment of conditional contraband, especially food supplies, to Germany was practically impossible. Prior to the protest sent by the American to the British government on December 28 last, such a shipment did not actually take place in a single case. Even after this protest the Imperial Embassy knows of only a single case in which an American shipper has ventured to make a shipment for the purpose of legitimate sale to Germany. Both ship and cargo were immediately seized by the English and are being held in an English port under the pretext of an order of the German federal council (Budesrat) regarding the grain trade, although this resolution of the federal council relates exclusively to grain and flour, and not to other foodstuffs, besides making an express exception with respect to imported foodstuffs, and although the German government gave the American government an assurance, and proposed a special organization whereby the exclusive consumption by the civilian population is absolutely guaranteed.

Under these circumstances, the seizure of the American ship was inadmissible according to recognized principles of international law. Nevertheless the United States government has not to date secured the release of the ship and cargo, and has not, after a duration of the war of eight months, succeeded in protecting its lawful trade with Germany.

Such a long delay, especially in matters of food supply, is equivalent to an entire denial. The Imperial Embassy must therefore assume that the United States government acquiesces in the violations of international law by Great Britain.

Then there is also the attitude of the United States in the question of the exportation of arms. The Imperial government feels sure that the United States government will agree that in questions of neutrality it is necessary to take into consideration not only the formal aspect of the case, but also the spirit in which the neutrality is carried out.

The situation in the present war differs from that of any previous war. Therefore any reference to arms furnished by Germany in former wars is not justified, for then it was not a question whether war material should be supplied to the belligerents, but who should supply it in competition with other nations. In the present war all nations having a war material industry worth mentioning are either involved in the war themselves or are engaged in perfecting their own armaments, and have therefore laid an embargo against the exportation of war material. The United States is accordingly the only neutral country in a position to furnish war materials. The conception of neutrality is thereby given a new purport, independently of the formal question of hitherto existing law. In contradiction thereto, the United States is building up a powerful arms industry in the broadest sense, the existing plants not only being worked but enlarged by all available means, and new ones built. The international conventions for the protection of the rights of neutral nations doubtless sprang from the necessity of protecting the existing industries of neutral nations as far as possible from injury in their business. But it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state, such as is the development of the arms industry in the United States, the business whereof, under the present conditions, can benefit only the belligerent powers.

This industry is actually delivering goods only to the enemies of Germany. The theoretical willingness to supply Germany also if shipments thither were possible, does not alter the case. If it is the will of the American people that there shall be a true neutrality, the United States will find means of preventing this one-sided supply of arms or at least of utilizing it to protect legitimate trade with Germany, especially that in foodstuffs. This view of neutrality should all the more appeal to the United States govern-